

**AGENDA  
SPECIAL CITY COUNCIL MEETING  
CITY OF BANNING  
BANNING, CALIFORNIA**

June 11, 2019  
2:30 p.m.

Banning Civic Center  
Council Chamber  
99 E. Ramsey Street

**I. CALL TO ORDER**

Roll Call – Council Members Happe, Peterson, Wallace, Mayor Pro Tem Andrade and Mayor Welch

- A. Opportunity for Public to address closed session items.
- B. Convene closed session.

**II. CLOSED SESSION**

1. **CONFERENCE WITH LABOR NEGOTIATORS** Pursuant to Government Code Section 54957.6 – City Designated Representative: Doug Schulze, City Manager, Kevin Ennis, City Attorney, Banning Police Officer Association (BPOA).
2. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**  
(Pursuant to paragraph (1) of subdivision (d) of Section 54956.9)  
Name of Case: James Arthur Algea II and Cali Emerald Care, Inc. v. City of Banning  
Case No. RIC 1903009
3. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**  
(Pursuant to Paragraph (2) of Subdivision (d) Government Code Section 54956.9)  
Number of Cases: One Case
4. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**  
(Pursuant to Subdivision (a) of Government Code Section 54956.9)  
Name of Case: Sustainers Alliance for Environmental Responsibility (SAFER) v. City of Banning, et al. (Lawrence Equipment Warehouse Project)  
Case No. RIC 1903059
5. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**  
(Pursuant to Government Code Section 54956.8)  
Property: 4133 West Wilson Street, Banning, California

City Negotiators: Doug Schulze, City Manager and Tom Miller, Electric Utility Director

Negotiating Parties: Dora and Art Nordquist

Under Negotiation: Price and terms for potential purchase of electrical equipment and meters in the Mountain Air Mobilehome Park

6. **PUBLIC EMPLOYEE PERFORMANCE EVALUATION**  
(Pursuant to Government Code Section 54957)

Title: City Manager

III. **ADJOURNMENT**

*The City of Banning promotes and supports a high quality of life that ensures a safe and friendly environment, fosters new opportunities and provides responsive, fair treatment to all and is the pride of its citizens*

**NOTICE:** Pursuant to Government Code § 54954.3(a), the only public comment that will be permitted during this Special Meeting is that pertaining to items appearing on this special meeting agenda. Any member of the public may address this meeting of the Mayor and Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public.

**In compliance with the Americans with Disabilities Act**, if you need special assistance to participate in this meeting, please contact the City Clerk's Office (951) 922-3102. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II]



**AGENDA  
SPECIAL WORKSHOP MEETING  
CITY OF BANNING  
BANNING, CALIFORNIA**

June 11, 2019  
3:30 p.m.

Banning Civic Center  
Council Chamber  
99 E. Ramsey Street

**I. CALL TO ORDER**

Roll Call – Council Members Happe, Peterson, Wallace, Mayor Pro Tem Andrade and Mayor Welch

**II. WORKSHOP**

Electric Utility Workshop ..... 1

**III. PUBLIC COMMENTS – *Opportunity for the public to address items on the Agenda***

**IV. ADJOURNMENT**

*The City of Banning promotes and supports a high quality of life that ensures a safe and friendly environment, fosters new opportunities and provides responsive, fair treatment to all and is the pride of its citizens.*

**NOTICE:** Pursuant to Government Code § 54954.3(a), the only public comment that will be permitted during this Special Meeting is that pertaining to items appearing on this special meeting agenda. Any

member of the public may address this meeting of the Mayor and Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to "share" his/her five minutes with any other member of the public.

**In compliance with the Americans with Disabilities Act**, if you need special assistance to participate in this meeting, please contact the City Clerk's Office (951) 922-3102. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II]

*Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Friday, 8 a.m. to 5 p.m.*

**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**

**AGENDA  
REGULAR MEETING  
CITY OF BANNING  
BANNING, CALIFORNIA**

June 11, 2019  
**5:00 p.m.**

Banning Civic Center  
Council Chamber  
99 E. Ramsey Street

*The following information comprises the agenda for the regular meeting of the City Council, and a joint meeting of the City Council and the Banning Utility Authority.*

*Per City Council Resolution No. 2016-44 matters taken up by the Council before 10:00 p.m. may be concluded, but no new matters shall be taken up after 10:00 p.m. except upon a unanimous vote of the council members present and voting, but such extension shall only be valid for one hour and each hour thereafter shall require a renewed action for the meeting to continue.*

**I. CALL TO ORDER**

- Invocation – Merle Malland, Banning Police Chaplain
- Roll Call – Council Members Happe, Peterson, Wallace, Mayor Pro Tem Andrade and Mayor Welch

**II. AGENDA APPROVAL**

**III. PRESENTATION**

1. Proclamation Recognizing Heidi Meraz Upon Retirement from City Service ..... **ORAL**
2. RCTC 60 Truck Route Presentation ..... **ORAL**

**IV. REPORT ON CLOSED SESSION**

**V. PUBLIC COMMENTS, CORRESPONDENCE, AND APPOINTMENTS**

PUBLIC COMMENTS – *On Items Not on the Agenda*

*A five-minute limitation shall apply to each member of the public who wishes to address the Mayor and Council on a matter not on the agenda. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public. (Usually, any items received under this heading are referred to staff for future study, research, completion and/or future Council Action. See last page.) PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.*

CORRESPONDENCE:

Items received under this category may be received and filed or referred to staff for future research or a future agenda.

APPOINTMENTS:**VI. CONSENT ITEMS**

*(The following items have been recommended for approval and will be acted upon simultaneously, unless a member of the City Council wishes to remove an item for separate consideration.)*

**Motion: Approve Consent items 1 through 5: Items \_\_\_\_, \_\_\_\_, \_\_\_\_, to be pulled for discussion.** *(Resolutions require a recorded majority vote of the total membership of the City Council)*

• **Mayor to Open Consent Items for Public Comments**

1. Approval of Special Meeting – 5/28/2019 Minutes (Closed Session) ..... 16
2. Approval of Special Meeting – 5/28/2019 Minutes (Workshop) ..... 19
3. Approval of Regular Meeting – 5/28/2019 Minutes ..... 56
4. Receive and File Contracts Approved Under the City Manager's Signature Authority for the Month of May, 2019..... 76
5. Authorize the City Manager to Sign the Notice of Completion (NOC) for Project No. 2017-16,"Citywide Various Street Improvements" as Complete and Direct the City Clerk to Record the Notice of Completion. .... 80

**VII. PUBLIC HEARINGS**

1. Adoption of Resolution, Approving the Cedar Hills Apartments ("The Project"), General Plan Amendment No. 18-2504: Zone Change No. 18-3503; Design Review No. 18-7011; and Environmental Assessment No. 18-1508 for the Proposed Development of a 96-Unit Apartment Facility and Associated Infrastructure on 7.08 Acres of Land Within the Low Density Residential (LDR) Land Use District (APNS 534-283-011 and 534-283-014) ..... 96  
*(Staff Report – Adam Rush, Community Development Director)*

**Recommendation(s): Staff recommends that the City Council continue the public hearing and project discussion to the June 25, City Council meeting at the request of the project applicant.**

2. Adoption of Resolution, Approving Tentative Tract Map (TTM) 36710, Variance No. 19-3001, Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP) for a Proposal to Subdivide Four Lots Totaling 10.6 Acres Into 39 Single-Family Residential Lots and Three Lettered Lots and a Variance to Allow for a Reduced Lot Size and Width for

ALot 7, Assessor's Parcel Numbers 534-183-014, 534-200-004, 534-200-008 and 534-200-047. .... 107

*(Staff Report – Adam Rush, Community Development Director)*

**Recommendation(s):** Staff recommends that the City Council: 1) Find that in accordance with CEQA adopting a Mitigated Negative Declaration and Mitigation Monitoring Report and Program for the project; 2) Approve Tentative Tract Map No. 36710 to subdivide approximately 10.6 acres into 39 single-family residential lots in the Low Density Residential (LDR) General Plan and Zone; and 3) Approve Variance No. 19-3001 to authorize a reduction in the minimum square footage and minimum width for residential lot number seven.

3. Adoption of Resolution, and Ordinance No. 1547 Making Findings Pursuant to CEQA, Ordinance No. 1547 Amends Chapter 17.12 “Commercial and Industrial Zoning Districts” and 17.36 “Sign Regulations of Title 17 “Zoning” of the Banning Municipal Code to Authorize Electronic Message Centers in the Downtown Commercial Zoning District, Subject to a Conditional Use Permit (CUP) and Development Agreement; and Adoption of Resolution Denying Zoning Text Amendment (ZTA) 19-97502, Subject to the Findings and Conclusions Incorporated Herein, City of Banning Downtown Commercial Zoning District. .... 319

*(Staff Report – Adam Rush, Community Development Director)*

**Recommendation(s):** The Planning Commission recommends that the City Council adopt Resolution taking the following actions: 1) Make a determination under CEQA Guidelines Section 15270 that the California Environmental Quality Act (CEQA) does not apply to projects which a public agency rejects or disapproves; 2) Adopt Resolution denying Ordinance No. 1547, for Zoning Text Amendment 19-97502, which amends Chapter 17.12 and 17.36 of the Banning Municipal Code (BMC) to authorize Electronic Message Centers in the Downtown Commercial Zoning District, subject to a Conditional Use Permit (CUP), subject to the findings and conclusions incorporated therein.

**Optional Recommendation:** 1) Make a determination under CEQA Guidelines Section 15060(c)(3) that the Zoning Text Amendment is not subject to CEQA because the amendment is not a “project” as defined by the CEQA Guidelines Section 15378; 2) Adopt Resolution approving Ordinance No. 1547, for Zoning Text Amendment 19-97502, which amends Chapter 17.12 and 17.36 of the Banning Municipal Code (BMC) to authorize Electronic Message Centers in the Downtown Commercial Zoning District, subject to a Conditional Use Permit (CUP), subject to the findings and conclusions incorporated therein; and 3) Introduce, as read by title only, Ordinance No. 1541 (Attachment 4), an Ordinance of the City Council of the City of Banning, California, Approving Zoning Text Amendment 19-97502 to Amend Chapter 17.12 and 17.36 of the Banning Municipal Code (BMC) to authorize Electronic Message Centers in the Downtown Commercial Zoning District, subject to a Conditional Use Permit (CUP), subject to the findings and conclusions incorporated therein.

**Mayor asks the City Clerk to read the title of Ordinance 1547**

*“Ordinance No. 1547, An Ordinance of the City Council of the City of Banning, California Making Findings Pursuant to CEQA, Ordinance No. 1547 Amends Chapter 17.12 “Commercial and Industrial Zoning Districts” and 17.36 “Sign Regulations of Title 17 “Zoning” of the Banning Municipal Code to Authorize Electronic Message Centers in the Downtown Commercial Zoning District, Subject to a Conditional Use Permit (CUP) and Development Agreement.” (First reading and Introduction).”*

**Motion:**        **I move to waive further reading of Ordinance No. 1547**  
(Requires a majority vote of the Council)

**Motion:**        **I move that Ordinance No. 1547 pass its first reading**

4.        Resolution Adopting a Notice of Exception and Approving General Plan Amendment to Incorporate the City of Banning’s 2017 Local Hazard Mitigation Plan (LHMP) Into the Safety Element of the General Plan. . . . . 426  
(Staff Report – Adam Rush, Community Development Director)

**Recommendation(s): Staff recommends that the City Council adopt Resolution, which makes the necessary findings that General Plan Amendment (GPA) No. 19-2501 is exempt from California Environmental Quality Act (CEQA) and approve the GPA, amending the Safety Element of the City’s General Plan to incorporate the City of Banning’s 2017 Local Hazard Mitigation Plan (LHMP) into the Safety Element of the General Plan.**

5.        Adopt Resolution, Confirming the Levy and Collection of Assessments Within the City of Banning’s Landscape Maintenance District No. 1 for Fiscal Years 2019/2020..... 511  
(Staff Report – Art Vela, Director of Public Works/City Engineer)

**Recommendation(s): Staff recommends that the City Council: 1) Adopt Resolution, confirming the Levy and Collection of Assessments within the City of Banning’s Landscape Maintenance District (LMD) No. 1 for Fiscal Year 2019/2020 pursuant to the provisions of Part 2 of Division 15 of the California Streets and Highways Code; 2) Authorize and direct the City Clerk to file the diagram and assessment with the Riverside County Assessor/County Clerk-Recorder’s Office; and 3) Authorize the City Clerk to certify the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions**

**VIII. ANNOUNCEMENTS AND REPORTS**

CITY COUNCIL COMMITTEE REPORTS

REPORT BY CITY ATTORNEY

REPORT BY CITY MANAGER

## REPORT OF OFFICERS

1. Adopt Resolution Approving an Agreement for Two Years for Fire Services with Riverside County Fire Department. .... 527  
(Staff Report – Todd Hopkins, Division Chief)

**Recommendation (s): Staff recommends that the City Council adopt Resolution approving an Agreement for two years for fire services with Riverside County Fire Department.**

2. Adopt Resolution, Approving Service Agreements with JP Nelson & Sons Construction, Inc., and Deguire Weed Abatement, Inc., for Weed Abatement Services. .... 563  
(Staff Report – Phil Holder, Police Captain)

**Recommendation (s): Staff recommends, 1) Approving a Service Agreement with JP Nelson & Sons Construction, Inc., in an amount not-to-exceed \$20,000 and Deguire Weed Abatement, Inc., in an amount Not to Exceed \$20,000 for Weed Abatement Services for Fiscal Year 2019/2020 with the option to renew for three (3) additional single year periods; and 2) Authorizing the City Manager to execute the Weed Abatement Service Agreements with JP Nelson & Sons Construction, Inc., and Deguire Weed Abatement, Inc., for Fiscal Year 2019/2020 with the option to renew for three (3) additional single year periods.**

3. Adopt Resolution, Establishing Fiscal Year 2020 Service Charges for the Collection, Transportation, and Disposal of Solid Waste. .... 698  
(Staff Report – Art Vela, Director of Public Works/City Engineer)

**Recommendation (s): Staff recommends that the City Council adopt Resolution: 1) Establishing the Fiscal Year 2020 rate increase for the collection, transportation, and disposal of solid waste; 2) the Fiscal Year 2020 rate adjustment for the collection, transportation, and disposal of solid waste services shall be effective July 1, 2019 and is equal to an overall increase of 3.08%; and 3) rescind all previous collection, transportation and disposal of solid waste rate structures.**

4. Adopt Resolution, Approving the Fourth Amendment to Custodial Services Agreement with Merchants Building Maintenance, Inc. of Pomona, California for Fiscal Year 2019/2020 in the Amount of \$76,769.24 ..... 715  
(Staff Report – Art Vela, Director of Public Works/City Engineer)

**Recommendation (s): Staff recommends that the City Council: 1) Approve the Fourth Amendment to the Contractual Services Agreement with Merchants Building Maintenance, LLC for a Not to Exceed total of \$76,769.23 for Fiscal Year 2019/2020; 2) Authorize the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the Fourth Amendment to the Agreement with Merchants Building Maintenance, LLC; 3) Authorize the City Manager or his designee to execute Fourth Amendment to the Agreement with Merchants Building Maintenance, LLC; and 4) Authorize City**



**Clerk to certify to the adoption of this Resolution and shall cause the certified resolution to be filed in the book of original resolutions.**

5. Adopt Resolution, Approving the Fourth Amendment to the Landscape Maintenance Services Agreement for City Facilities with Artistic Maintenance, Inc., of Lake Forest, California for Fiscal Year 2019/20 in the Amount of \$52,044 ..... 728  
(Staff Report – Art Vela, Director of Public Works/City Engineer)

**Recommendation (s): Staff recommends that the City Council: 1) Approve the Fourth Amendment to the Landscape Maintenance Services Agreement for City Facilities with Artistic Maintenance, Inc. of Lake Forest California for Fiscal year 2019/2020 in the amount of \$52,044; 2) Authorize the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the Fourth Amendment to the Landscape Maintenance Services Agreement for City Facilities with Artistic Maintenance, Inc; 3) Authorize the City Manager or his designee to execute the Fourth Amendment to the Landscape Maintenance Services Agreement for City Facilities with Artistic Maintenance, Inc.; and 4) Authorize the City Clerk to certify the adoption of this resolution and to have said resolution filed in the book of original resolutions.**

6. Adopt Resolution, Awarding a Professional Services Agreement to Artistic Maintenance, Inc., for the Operation and Maintenance of Landscape Maintenance District No. 1 for Fiscal Year 2019/2020 in the Amount of \$78,150..... 742  
(Staff Report – Art Vela, Director of Public Works/City Engineer)

**Recommendation(s): Staff recommends that the City Council: 1) Award a Professional Services Agreement for the Operation and Maintenance of Landscape Maintenance District (LMD) No. 1 to Artistic Maintenance, Inc. in the amount of \$5,262.50/month (\$63,150/year) and an additional \$15,000 for miscellaneous irrigation repairs and landscape replacement bringing the total contract to a Not to Exceed amount of \$78,150; 2) Authorize the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the Professional Services Agreement for the Operation and Maintenance of Landscape Maintenance District No. 1; 3) Authorize the City Manager or his designee to execute the Professional Services Agreement with Artistic Maintenance of Lake Forest, California in the amount of \$78,150; and 4) Authorize the City Clerk to certify the adoption of this resolution and to have said resolution filed in the book of original resolutions.**

7. Adopt Resolution Approving the Fiscal Year 2019/20 – 2021/22 Short Range Transit Plan, Authorizing the Submittal of the FY 2019/20 Local Transportation Fund Claim ..... 946  
(Staff Report – Heidi Meraz, Director of Parks & Recreation)

**Recommendation (s): Staff recommends that the City Council adopt Resolution approving the FY 2019/20 and 2021/22 Short Range Transit Plan (S RTP) and authorizing the submittal of the 2019/20 Local Transportation Fund (LTF) claim in the amount of \$1,510,283.**

8. Banning Electric Utility (BEU) Mapping Pilot Project as Approved in the Mid-Year Budget Resolution..... 978  
(Staff Report – Tom Miller, Electric Utility Director)
  - **Recommendation** (s): Staff recommends that the City Council: 1) Approve City Council Resolution, Authorizing the Electric Utility Director to complete the necessary tasks to implement a pilot mapping project that includes:
    - Entering into a professional services agreement with Acculine Engineering in the amount of \$24,345; and,
    - Entering into a purchase contract with Partner Software in the amount of \$80,500; and,
    - Entering into a purchase contract with Reavis Code Utility Solutions in the amount of \$25,500, and,
    - Authorizing a contingency of \$29,155 for additional proprietary software and or hardware needs; and 2) Authorizing the City Manager or his designee to execute the respective agreements, contracts, software licenses, or any other specific documentation necessary and related to the Pilot Mapping Project for the Banning Electric Utility.
  9. Adopt Resolution, Authorizing Annual Rate Adjustment for City Attorney in Excess of 3%. .... 1007  
(Staff Report – Douglas Schulze, City Manager)
- Recommendation: Adopt Resolution, Authorizing an Annual Rate Adjustment for the City Attorney in Excess of 3%.**

**RECESS THE REGULAR MEETING OF THE CITY COUNCIL AND CALL TO ORDER A JOINT MEETING OF THE BANNING CITY COUNCIL AND THE BANNING UTILITY AUTHORITY**

- Roll Call – Board Members Happe, Peterson, Wallace, Vice Chairman Andrade, and Chairman Welch

**IX. REPORTS OF OFFICERS**

1. Adopt Resolution of the Utility Authority, Approving an Agreement in the Amount of \$174,907 with Hemet Manufacturing Co., Inc., dba Genesis Construction for the Altitude Valve at Southwest Reservoir; Establishing a Total Project Budget of \$192,398; and Rejecting all Other Bids ..... 1033  
(Staff Report – Art Vela, Director of Public Works/City Engineer)

**Recommendation(s):** Staff recommends that the Utility Authority :1) Approve an Agreement with Hemet Manufacturing Co., Inc. dba Genesis Construction for the Altitude Valve at Southwest Reservoir in the amount of \$174,907 and a 10% contingency in the amount of \$17,491 to cover unforeseen conditions and reject all other bids, for a total project budget of \$192,398; 2) Authorize the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the Agreement with Hemet Manufacturing Co., Inc. of Hemet, CA for the “Altitude Valve at Southwest

Reservoir” and to approve change orders within the 10% contingency; 3) Authorize the City Manager or his designee to execute the Agreement with Hemet Manufacturing Co., Inc. for the “Altitude Valve at Southwest Reservoir”; and 4) Authorize the Deputy Utility Secretary to certify the adoption of this resolution and to have said resolution filed in the book of original resolutions.

**X. DISCUSSION ITEM**

10. Electric Cost of Service Analysis Committee Report. .... 1225

**RECESS THE JOINT MEETING OF THE CITY COUNCIL AND UTILITY AUTHORITY  
AND RECONVENE THE REGULAR MEETING OF THE BANNING CITY COUNCIL**

**XI. DISCUSSION ITEM**

None.

**BANNING UTILITY AUTHORITY (BUA)** – Next Meeting, June 25, 2019, 5:00 p.m.

**XII. ITEMS FOR FUTURE AGENDAS**

1. Website Redesign
2. Wildfire Mitigation Plans
3. 553 E. Ramsey Receivership

**XIII. ADJOURNMENT**

**NOTICE:** Any member of the public may address this meeting of the Mayor and City Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public.

Any member of the public may address this meeting of the Mayor and Council on any item which does not appear on the agenda, but is of interest to the general public and is an item upon which the Mayor and Council may act. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public. The Mayor and Council will in most instances refer items of discussion, which do not appear on the agenda to staff for appropriate action or direct that the item be placed on a future agenda of the Mayor and Council. However, no other action shall be taken, nor discussion held by the Mayor and Council on any item, which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of Section 54954.2 of the Government Code.

**In compliance with the Americans with Disabilities Act**, if you need special assistance to participate in this meeting, please contact the City Clerk’s Office (951)-922-3102. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II]

*Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Friday, 8 a.m. to 5 p.m.*

**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

05/28/2019  
SPECIAL MEETING- CLOSED SESSION

COUNCIL/BOARD MEMBERS PRESENT: Councilmember Happe  
Councilmember Peterson  
Councilmember Wallace  
Mayor Pro Tem Andrade  
Mayor Welch

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Douglas Schulze, City Manager  
Kevin G. Ennis, City Attorney  
Jennifer Petrusis, Deputy City Attorney (via teleconference)  
Ginetta Giovinco, Deputy City Attorney (via teleconference)  
Tom Miller, Electric Utility Director  
Daryl A. Betancur, Deputy City Clerk

## I. CALL TO ORDER

A special meeting of the Banning City Council was called to order by Mayor Welch on May 28, 2019 at 3:00 p.m. at the Banning Civic Council Chambers, 99 E. Ramsey Street, Banning, California.

## II. CLOSED SESSION

Mayor Welch opened the closed session items for public comments.

There were no public comments.

### 1. **CONFERENCE WITH LABOR NEGOTIATORS**

Pursuant to Government Code Section 54957.6

City Designated Representatives: Douglas Schulze, City Manager, Kevin G. Ennis, City Attorney

Employee Organization: Banning Police Officer Association (BPOA). **Staff report was provided. No final or reportable action.**

### 2. **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

(Pursuant to paragraph (1) of subdivision (d) of Section 54956.9)

Name of case: City of Banning and People of the State of California v. Go Green Calming Solution, et al., Case No. RIC 1806731. **Status report was provided. No final or reportable action.**

3. **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**  
(Pursuant to paragraph (1) of subdivision (d) of Section 54956.9)  
Name of case: James Arthur Algea II and Cali Emerald Care, Inc. v. City of Banning, Case No. RIC 1903009. **Report provided stating TRO was denied by the Court.**
4. **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**  
(Pursuant to paragraph (1) of subdivision (d) of Section 54956.9)  
Name of cases: Sierra Club v. City of Banning; Case No. RIC 1900544  
Golden State Environmental Justice Alliance v. City of Banning; Case No. RIC 1900654. **Status report was provided. No final or reportable action.**
5. **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**  
(Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9)  
One potential case: facts and circumstances reported by Councilmember Wallace that may result in litigation and in which the City could become a party. **Report was presented. No final or reportable action.**

The meeting convened to closed session at 3:00 p.m. and reconvened to open session at 4:00 p.m.

### III. ADJOURNMENT

By consensus, the meeting adjourned at 4:00 p.m.

Minutes Prepared by:

---

Daryl Betancur, Deputy City Clerk

The entire discussion of this meeting and related documents can be found by visiting the following website: <https://banningca.gov/ArchiveCenter/ViewFile/Item/2083> or by requesting a CD or DVD at Banning City Hall located at 99 E. Ramsey Street.

**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**



MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

05/28/2019  
SPECIAL MEETING- WORKSHOP

COUNCIL/BOARD MEMBERS PRESENT: Councilmember Happe  
Councilmember Peterson  
Councilmember Wallace  
Mayor Pro Tem Andrade  
Mayor Welch

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Douglas Schulze, City Manager  
Kevin G. Ennis, City Attorney  
Daryl Betancur, Deputy City Clerk  
Tom Miller, Electric Utility Director  
Carla Young, Management Analyst  
Heidi Meraz, Community Services Director  
Art Vela, Public Works Director  
Adam Rush, Community Development Director  
Suzanne Cook, Deputy Finance Director  
Ted Shove, Economic Development Manager  
Laurie Sampson, Executive Secretary

**I. CALL TO ORDER**

A special meeting of the Banning City Council was called to order by Mayor Welch on April 23, 2019 at 4:02 p.m. at the Banning Civic Council Chambers, 99 E. Ramsey Street, Banning, California.

**II. WORKSHOP**

Review of Meeting Management Techniques from Other Cities and Options for  
Considering Improvements to City Council Meetings.....

City Manager Douglas Schulze made introductory remarks stating that the purpose with this presentation by the City Attorney was to make meetings more effectively; stated that throughout his career he had been asked by Councilmembers about inefficiencies with Council meetings; he spoke about meeting management techniques commonly used by other cities to improve meeting efficiency; commented that he hoped to share some of those techniques that were used by other cities thus making the Council aware of them and determine whether or not those were options that they were willing to consider, but that said options were nevertheless available to them.

Mr. Schulze expressed his commitment to ensure that the public had an opportunity to be heard and to have their rights respected; that the purpose of holding City Council meetings was to conduct the business of the City, meaning that the Council had to have time for adequate discussions, deliberation and decision-making; he commented that after three hours into the meeting, Councilmembers may have a hard time focusing; that the City of Banning had adopted Resolution No. 2016-144, which required the Council by consensus decide whether or not they want to continue deliberating past the 10:00 p.m. hour; he stated that in Banning since the regular meetings start at 5:00 p.m., we would have to be five hours into the meeting before that rule was triggered.

City Attorney Kevin G. Ennis made a presentation regarding review of meeting management techniques from other cities and options for considering improvements to City Council meetings.

Mr. Ennis spoke about the goals of meeting management, making special reference to goals of meeting management; spoke of best practices, which the City of Banning was already using; stated that the goal of meeting management was to ensure that the City's business was handled in an informative, thoughtful and reasoned manner so that the Council is able to make its best decision on the issues presented; spoke of other goals in terms of balancing public participation with efficiency and also complying with legal requirements such as the Brown Act and public hearing requirements.

He also spoke about organizing the day, types and timing of meetings; that cities use workshop type special meetings for time-sensitive items and that Banning was already utilizing the workshop meetings to discuss important lengthy subjects; stated that cities often place closed session meetings at a point that does not interfere with starting the regular meeting on time; that because the public cannot attend closed session, it can occur when public was not normally available; he touched upon ways cities traditionally organize regular meeting agendas; commented on the specific role of the Mayor as the Presiding Officer, and how he or she can run an efficient meeting without impeding on people's speech rights and that the Mayor has a tough job.

Other topics City Attorney Kevin G. Ennis discussed included: basic elements of processing an agenda item whereby the Mayor first announces the agenda item number and subject matter; that the Mayor should invite staff to report on the item, including presenting staff recommendations; that the Mayor should ask Councilmembers if they have technical questions for staff for clarification but Council should not begin to discuss the merits of the item before hearing from the public first.

Mr. Ennis also stated the reasons why Council meetings go on and on articulating that these could be the result of audience, Mayor, Councilmember or staff problems. He spoke at length about these issues; he provided some useful suggestions to counterbalance these problems by using workshops, town hall meetings, continuing a controversial item to a workshop; commented on proper parliamentary procedure with respect to clear motions; managing audience participation during controversial topics, including managing disruptions by the public; provided other best management practice techniques such as the use of speaker cards, providing three minutes for speakers per item at regular meetings to accommodate additional speakers; and modernizing the agenda template to conform to modern agenda preparation practices.

Having completed his presentation, Mr. Ennis entertained questions from the Council.

Councilmember Peterson commented on the issue of the three minutes for speakers stating that that Council had the three minute rule up until 2013 and that the people had requested longer and longer time and as a result this was changed to five minutes; he stated that he was shocked that this issue was coming back and reiterated his firm opposition to going back to the three minutes per speaker; he also commented on the issue of speaker cards stating that issue too had been raised when Andy Takada was the City Manager and had also been rejected.

Councilmember Happe stated that in his short time on the Council, he agreed that limiting the time was a limiting factor on hearing the opinions of citizens of the City; that for larger cities that would make sense, however, that we should concentrate in welcoming the people and filling the Council Chamber with more people; he also stated disagreement with the speaker card suggestion and limiting the time for speakers. Councilmember Happe also expressed concern with correspondence received for the meetings and stated that while he recognized that there was no legal requirement to read this out loud in public that he was in favor of doing so and inquired about how these communications were now being addressed.

Deputy City Clerk Daryl Betancur stated that whenever communications were received on agenda items for specific meetings; that based on Government Code provisions those items also need to be accessible to the public; Mr. Betancur commented that the manner in which we meet this requirement was that these communications are provided to the Mayor, City Councilmembers, key staff and also copies of said communications are placed in the back table for public view and transparency purposes; he also stated that he recommended folks that if they want to provide any communications to Council to bring additional copies to be distributed so that these communications can be distributed in a more timely manner; in addition, Deputy City Clerk Daryl Betancur responded that on the issue of including communications as part of the minutes; that staff was already addressing that concern by attaching them to the minutes that are part of a subsequent agenda packet.

### III. **PUBLIC COMMENTS** – Opportunity for the public to address items on the agenda.

#### Public Comment.

Inga Schuler spoke read a one-page statement into the record, which is hereby included, and which partially states that she wanted to call attention to the faulty tag line on the Banning logo that had been voted our years ago; that this workshop comes on the heels of the February 28, 2019 workshop regarding City Council Meeting Policies and Procedures, many of which were with some degree of conflict with citizen's constitutional and civil rights, especially those of the first amendment; she articulated that she was adamantly opposed to the three minute speaking time limit and stated she wanted the five minute time limit to remain; commented that she too as against the use of speaker cards; and that the Council has to set an example regarding respecting the people who speak and each other.

Diego Rose addressed the City Council with respect to the five-minute speaker time limit stating that this was something that the community had fought for several years back as the result of inconsistencies with time allowances whereby developers and others were given more time to speak than the general public, which created the issue that the Council was provided with vast amounts of information that were one-side, and that as a result, the public had fought back; commented on the Council's ability to listen, which he felt was a barrier and that people's voices were not being heard. He stated that he was in favor of retaining the five-minute speaker time limit.

Mayor Welch clarified for the audience that the purpose with this workshop was not for the Council to make changes, but rather to explore what we have been doing and what we could potential improve upon with respect to running the meeting; that he had no indication from his colleagues that they wanted to make changes.

Paul Perkins commented that there has been a change with respect to the emails or correspondence that people had sent in; that he was in favor of having these items read into the record openly and recorded later on; stated that he was in favor of retaining the five minutes for speakers.



Jerry Westholder spoke about the first amendment and read a statement stating that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances"; he also mentioned Brown Act provisions, specifically GC 54950 ".The people of this State do not yield their sovereignty to the agencies which serve them, the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created".

David Ellis stated that eight years ago this place was packed, meaning there were more people attending the meetings; that every time we get a new City Manager, the community gets a new set of rules because he cannot put on his armor and take a bit of criticism; that the City Council should listen more to the people.

Nick Parra stated that he did not agree with negative talk because it was divisive and attacks people; that we have established norms; he urged people to be respectful to each other; that even the people who come up to the podium in address the Council in an angry manner, they have Banning at heart and want what is best for Banning. Lastly, Mr. Parra stated that he was in favor or more workshops.

#### **ACTION:**

There was no action taken.

#### **IV. ADJOURNMENT**

By consensus, the meeting adjourned at 5:18 p.m.

Minutes Prepared by:

---

Daryl Betancur, Deputy City Clerk

**The entire discussion of this meeting and related documents can be found by visiting the following website: <https://banninglive.viebit.com/player.php?hash=20OUi3p2szYL> or by requesting a CD or DVD at Banning City Hall located at 99 E. Ramsey Street.**

# **ATTACHMENT 1**

## **(City Attorney Presentation)**



# **Review of Meeting Management Techniques from other Cities and Options for Considering Improvements to City Council Meetings**

City of Banning  
City Council Meeting

May 28, 2019

**Presented by: Doug Schulze, City Manager & Kevin G. Ennis, City Attorney**

# Managing Meetings

---

## ▪ Goals of Meeting Management

- Ensure that the City's business is handled in an informative, thoughtful and reasoned manner so that the Council is able to make its best decision on the issues presented
- Balance public participation with efficiency
- Comply with legal requirements, such as the Brown Act and public hearing requirements
- Provide a competent, civil and efficient image of the City so persons want to serve on the Council, prospective employees want to seek employment with the City, and the public wants to come to meetings to have their voice heard



# Managing Meetings

---

- **Goals of Meeting Management (cont.)**
  - Relieve “meeting anxiety” for members of the public
  - Deal effectively with disruptive people
  - Allow for public comment and suggestions, particularly encouraging constructive suggestions
  - Make meetings end at a reasonable time



# Organizing the Day - Types and Timing of Meetings

---

- **Cities often use “workshop” type special meetings for time-intensive items**

- When Council needs to learn about a complex item or there is a lot of material to review
- Good opportunity for back-and-forth with staff on facts and issues regarding the item

- **Cities often place Closed Session meetings at a point that does not interfere with starting Regular Meeting on time**

- Because public cannot attend closed session, it can occur when public is not normally available



# How Cities traditionally organize Regular Meeting agendas

---

- **Traditional organization of efficient meeting agendas**
  - They provide the general public comment section near the beginning of the agenda to allow people to not wait long to speak on non-agenda items
  - They use speaker cards for public comment on items not on the agenda and items on the agenda
  - They limit public comments to three minutes
  - They do not read the text of letters submitted, but distribute them to the Council and only note the author, date and subject if submitted in connection with a public hearing item
  - They use the Consent Calendar for more routine or non-controversial items



# How Cities traditionally organize Regular Meeting agendas

---

- **Traditional organization of efficient meeting agendas**
  - City Manager and staff manage length of the meeting by capping number of items placed on agenda
  - Council starts on time
  - Council finishes at reasonable hour
  - All Participants (Staff, Council, Mayor and Public) are prepared and encouraged to be so

# Traditional Role of Mayor

---

## ▪ Role of the Mayor:

- Mayor is charged with applying the rules of conduct
- Somewhat like a traffic cop standing in the middle of a busy intersection
- Both pleasant and upbeat but firm when needed
- Councilmembers should ask to be recognized by the Mayor before speaking
- Mayor should take a back seat during discussions and focus on the flow of the meeting
- Common courtesy for the Mayor to speak last on an agenda item, but not a requirement
- Mayor can make or second a motion, but should do so only if other members do not do so or if he or she sees that an item needs to be moved along because discussion is complete



# Basic Elements of Processing an Agenda Item

---

## ▪ Basic Format for Agenda Item Discussion:

- First: Mayor should announce agenda item number and subject.
- Second: Mayor should invite staff to report on item, including the staff recommendations.
- Third: Mayor should ask Councilmembers if they have any technical questions for staff for clarification but Council should not begin to discuss the merits of the item.
- Fourth: Mayor should invite public comments, or, if applicable, open public hearing.

# Basic Elements of Processing an Agenda Item (cont.)

---

## ▪ Basic Format for Agenda Item Discussion

- Fifth: Mayor should ask staff if they have any comments or responses to the public comments or public testimony
- Sixth: Mayor should ask Councilmembers if they need any clarification from staff or from public speakers and obtain that clarification before the public comment section or public hearing is closed.
- Seventh: Mayor closes public comment or public testimony item and invites Councilmember discussion. If a public hearing item, Mayor should close public hearing before inviting Council discussion.





# Basic Elements of Processing an Agenda Item (cont.)

---

## ▪ Basic Format for Agenda Item Discussion

- Eighth: When Mayor senses the time is right, Mayor should invite a motion from Councilmembers.
- Ninth: Mayor, City Attorney or City Clerk may prompt the maker of the motion to be precise as to what is contained in the motion or if the matter needs to be taken in separate motions.
- Tenth: Mayor should determine if any member wishes to second the motion and should announce the name of the member who seconds the motion.





# Basic Elements of Processing an Agenda Item (cont.)

---

- **Basic Format for Agenda Item Discussion**
  - Eleventh: If motion is made and seconded, Mayor should repeat the motion if it is not clear and seek any clarification from the Council, the City Attorney or staff as to whether the motion is clear and covers the required elements of the agenda item.
  - Twelfth: Mayor calls for a vote on the motion.
  - Thirteenth: Mayor or City Clerk announces the result of the vote and what action, if any, the Council has taken.



# Why Meetings Go On . . . And On . . . And On

---

## ■ Staff problems

- Failure to prepare an organized presentation
  - Sometimes a PowerPoint can help show the location of a project, help describe it, or provide emphasis to important policy issues
  - Sometimes a PowerPoint (and getting it set up) is unnecessary and just delays what could otherwise be an expeditious agenda item
- Incomplete staff reports that do not describe the key elements of the action being considered or the key policy choice that is reflected in the item – the main policy point gets lost in minutia
- Non-responsive answers to questions
- Overly talkative staff or overly complete presentation that goes far “into the weeds” and takes away the focus on the main policy points

# Why Meetings Go On . . . And On . . . And On

---

## ▪ Audience problems

- Hostility – Use of meetings to publicly berate staff and the Council
- Disruptive “regulars”
- Failure to respect time limits
- Failure to stay on point
- Audience Members who want to speak on every issue
- Rudeness
- Personal attacks



# Why Meetings Go On . . . And On . . . And On

---

## ▪ Mayor problems

- Passive – lets audience interject after public comments are closed and lets Councilmembers speak before being recognized
- Autocratic – cuts other Councilmembers off before warranted and is unnecessarily stern or angry at colleagues, staff and audience
- Unprepared – does not know key points about agenda items and thus lets discussion wander
- Allows a Councilmember to monopolize discussion
- Failure to perceive when item is ready for action – allows a Councilmember to “beat a dead horse”



# Why Meetings Go On . . . And On . . . And On

---

## ■ Councilmember problems

- Failure to review agenda packet in advance and prepare for meeting
- Failure to ask questions or staff in advance and therefore uses Council Meeting time to become informed of basic information
- Too talkative and getting “into the weeds” on minor or unrelated issues that could be resolved by talking to staff in advance
- Failure to focus on issues and making comments that wander into different issues
- “Beating a Dead Horse”
- Using Council Regular Meetings as a “town hall” type meeting rather than asking for town hall meetings on particular issues
- One Councilmember speaking a second time on an agenda item when all members have had an opportunity to speak



# Meeting Management

---

## ▪ Suggestions for Councilmembers in Preparing for Meetings:

- Review agenda packet in advance of the day of the meeting day so you can ask the City Manager questions prior to the meeting
- Set up a standing time to meet with, or have a call with, the City Manager in advance of the meeting to go over the agenda
- Provide Councilmember or City Manager a heads up as to your questions and concerns with an item so you do not need to spend time at the meeting on those questions
- Let Councilmember or City Manager know what you are hearing in the community about an item so staff can prepare to answer that issue



# Meeting Management

---

## ■ Suggestions for Councilmembers:

- If a Councilmember wants to have a detailed and more informative presentation on an item, ask for a workshop on that item
- If a Councilmember wants to engage the public on an item, ask for an evening “town hall” style meeting to allow more back and forth discussion with the public on the item
- Keep Regular Meetings for business items
- If an agenda item gets bogged down, ask City Manager if the item can be continued to a workshop



# Clarity of Motions

---

- Be clear and complete when making a motion
- Examples of motions that are not clear
  - “I move”
  - “Move approval” (approval of what?) – you and your colleagues may understand but public may not
- **Examples of clear motions:**
  - “I move approval of agenda item No. 5”
  - “I make a motion that we adopt the resolution to approve the new expenditure policy.”
  - “I make a motion that we approve Resolution No. 10-001, approving the new expenditure policy.”



# Tips for Effectively Managing Meetings

---

- **If there are a lot of speakers on an item, the Mayor can discourage repetition:**
  - Ask audience not to repeat others
  - Ask for a show of hands of who is in support or opposed to the item
  - Ask for a representative speaker and give him/her additional time
  - Curb those who stray from subject
  - Discourage applause and demonstrations
  - Request speakers who make personal attacks to refrain from doing so



# Tips for Effectively Managing Meetings

---

## ▪ Manage public input

- Always helpful to explain public comment process when appropriate
- Use of speaker cards
  - Helps to allow the Council to move items up on the agenda when there are a lot of people who want to speak on an item
  - Saves time in having the Mayor ask before each item is taken if there is any one who wants to speak on that item
  - Common tool used by most cities to manage meetings
- Enforce reasonable time limits
- Require speakers to address chair
- Allow Councilmembers to ask questions
- Avoid debates between Councilmembers, City officials, City staff and members of the public



# Dealing With Disruptions

---

- Mayor is prepared to be firm and use the gavel
- Mayor should remind audience to be civil and courteous
- Councilmembers can decide to rise above comments and not “take the bait” but provide a brief response if it warrants it
- **Meet with repeat offenders privately**
  - If a member of the public has brought up an issue at more than one meeting, someone on staff or a councilmember should talk to that person before that person comes to a third meeting and gets the impression no one is listening



# Dealing With Disruptions

---

- Give offenders positive reinforcement when they are courteous
- Eject those who are disruptive only after three repeat warnings
- Take a “cooling off” break or recess after heated or controversial items
- Clear the room due to disruptions only after consulting with City Manager and City Attorney

# Options for Improvements in Regular Meetings

---

- Periodically have town hall meetings so that the public can speak their mind on certain topics
- Then use and expect your regular meetings to be more like business meetings than town hall meetings
- Use speaker cards like other cities to manage public input and regular meetings
- Provide five minutes per speaker per item at town hall meetings
- Provide three minutes per speaker per item at regular meetings



# Options for Improvements in Regular Meetings

---

## ▪ Modernize Agenda format

- Start meeting as a joint meeting rather than toggling back and forth between City Council and Utility Authority Meeting during the Regular Meeting
- Update agenda numbering system so that agenda items can be referred to more easily
- Add a Councilmember Report Item
  - Allow Councilmembers to report on items attended at public expense
  - Report on their own activities rather than to fit them under a heading of “committee reports”



# Options for Improvements in Regular Meetings

---

- **Someone should interject to remind speakers who are not abiding by Rules of Decorum**
  - All participants should refrain from making rude or derogatory remarks, remarks as to a person's integrity, or attack on a person's motives
  - Mayor, Councilmembers, City Manager or City Attorney can and should interject and remind speakers as to the decorum rules
  - Members have a First Amendment right to say what they want in their allotted time, but that doesn't mean that everyone else can't criticize or call out a speaker for making a personal attack or not abiding by rules of decorum





## Additional Suggestions, Questions and Answers



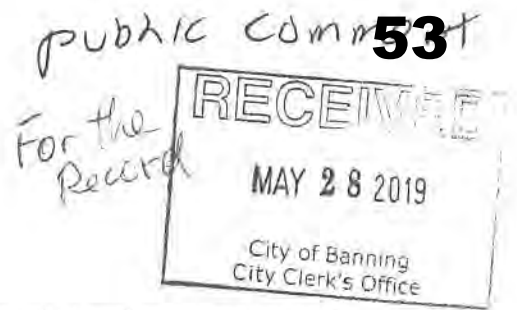


# Thank you!

Doug Schulze and Kevin G. Ennis

## **Attachment 2**

(Public Comments received in writing)



Inge Schuler  
Banning

Re: 28 May 2019 City of Banning "Special Workshop. Review of Meeting Management Techniques. . "

First of all, I should like to call your attention to the faulty tag line on the Banning Logo that had been voted out years ago. Pay attention to detail, please.

Second, this workshop comes on the heels of the 28 February 2019 Workshop "City Council Meeting Policies and Procedures," 34 pages of detailed rules and regulations, many of which are with some degree of conflict with citizens' constitutional and civil rights, especially of the First Amendment. I have already addressed these issues at city council meetings in the past. In view of the June 18<sup>th</sup> 2018 US Supreme Court 8-1 decision in favor of Fane Lozman, it would behoove this council to exert special care in observing the First Amendment rights of the citizenry. To recall the issue, Mr Lozman had been dragged out of the Riviera Beach city council meeting and arrested after speaking out about the allegedly corrupt dealings of a Palm Beach County commissioner.

Please remember that issue when you start intimidating your constituents.

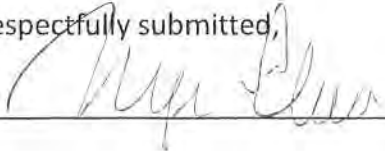
Third, another infringement of civil rights is proposed in the power point document with limiting the public's speaking time to three minutes instead of the hard fought for five minutes.(p 10) It was a noisy long drawn out fight to regain the abandoned time limit of 5 minutes

This Workshop resurrects once again the practice of requiring Speaker Cards before a citizen can address the city council during the Public Comments part of a city council meeting. This was a popular agenda for previous city managers, Andy Takata and Michael Rock. Rochelle Clayton wisely did not approach that subject as it had gone down in flames. You actually believe that that plan will "relieve meeting anxiety for members of the public"? (P 8 of your power point.) Really?

Your page 18 has a lovely list of "audience problems." Gee Willikers, do you want folks to be polite when some council members refer to them as hick town dwellers, divisive elements, negative folks, just because they disagree with council's corrupt decisions (Rancho San Gorgonio project) or the disastrous decision on the Sunset/Wilson project that was based on an entirely (150 pages) plagiarized Mitigated Negative Declaration. Citizens are justifiably angry when the people who swore an oath to uphold the Constitution continue to ignore the democratic process of listening to their constituency. Your list does not exempt our Mayor Welch from using the vulgar term for a "bunch of bovine excrement" when referring to a Grand Jury report.

Chuck this document.

Respectfully submitted,



---

**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**

MINUTES  
CITY COUNCIL

05/28/2019  
REGULAR MEETING

COUNCIL MEMBERS PRESENT: Councilmember Happe  
Councilmember Peterson  
Councilmember Wallace  
Mayor Pro Tem Andrade  
Mayor Welch

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT Douglas Schulze, City Manager  
Kevin G. Ennis, City Attorney  
Daryl Betancur, Deputy City Clerk  
Matthew Hamner, Police Chief  
Heidi Meraz, Community Services Director  
Tom Miller, Electric Utility Director  
Art Vela, Public Works Director/City Engineer  
Suzanne Cook, Deputy Finance Director  
Adam Rush, Community Development Director  
Ted Shove, Economic Development Manager  
Laurie Sampson, Executive Assistant  
Leila Lopez, Office Specialist

**I. CALL TO ORDER**

A regular meeting of the Banning City Council was called to order by Mayor Welch on May 28, 2019, at 5:28 p.m. at the Banning Civic Center Council Chamber, 99 E. Ramsey Street, Banning, California.

Bill Dunn from St. Stephens Episcopal Church offered the invocation.

Councilmember David Happe led the audience in the Pledge of Allegiance.

**II. APPROVAL OF AGENDA**

A motion was made by Councilmember Wallace, seconded by Councilmember Happe to approve the agenda as presented. Electronic roll call vote was taken as follows:

AYES: Happe, Peterson, Wallace, Andrade, & Welch  
NOES: None  
ABSTAIN: None  
ABSENT: None

### III. PRESENTATION

1. Certificate of Appreciation for Richard Sanchez, Former Parks & Recreation Commissioner ..... **ORAL**

Mayor Welch and members of the City Council honored Mr. Sanchez with a Certificate of Recognition for his well over 30 years as Parks & Recreation Commissioner.

### IV. REPORT ON CLOSED SESSION

#### 1. **CONFERENCE WITH LABOR NEGOTIATORS**

Pursuant to Government Code Section 54957.6

City Designated Representatives: Douglas Schulze, City Manager, Kevin G. Ennis, City Attorney

Employee Organization: Banning Police Officer Association (BPOA). **Staff report was provided. No final or reportable action.**

#### 2. **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION** (Pursuant to paragraph (1) of subdivision (d) of Section 54956.9)

Name of case: City of Banning and People of the State of California v. Go Green Calming Solution, et al., Case No. RIC 1806731. **Status report was provided. No final or reportable action.**

#### 3. **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION** (Pursuant to paragraph (1) of subdivision (d) of Section 54956.9)

Name of case: James Arthur Algea II and Cali Emerald Care, Inc. v. City of Banning, Case No. RIC 1903009. **Report provided stating TRO was denied by the Court.**

#### 4. **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION** (Pursuant to paragraph (1) of subdivision (d) of Section 54956.9)

Name of cases: Sierra Club v. City of Banning; Case No. RIC 1900544 Golden State Environmental Justice Alliance v. City of Banning; Case No. RIC 1900654. **Status report was provided. No final or reportable action.**

#### 5. **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

(Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9)

One potential case: facts and circumstances reported by Councilmember Wallace that may result in litigation and in which the City could become a party. **Report was presented. No final or reportable action.**

### V. PUBLIC COMMENTS, CORRESPONDENCE, AND APPOINTMENTS

Mayor Welch opened Public Comment for items not on the Agenda.

## Public Comments

Inga Schuler stated that she should like to commend Deputy City Clerk, Daryl Betancur for the exceptional detail in the recorded minutes of the last two regular City Council meetings; commented that this was very much appreciated by anyone who had to dig through video recordings of meetings in order to check on necessary documentation; she further stated that the inclusion of correspondence in the minutes was also appreciated. Ms. Schuler offered that the current City Manager did not want to bother with the official reading into the record of correspondence at City Council meetings, and that was much-resented brake of past customary practice.

Ms. Schuler further commented on the format of the agenda that was returning to the standard outline; she also made comments with respect to a reoccurring problem of transparency. She stated that on the issue of the 96 apartment project West of Hathaway and South of Hoffer Street at the Planning Commission level they were not told of the easement on Wilson Street that was part of the Circulation Element of the General Plan that also involved extensive realignment of gas lines; that staff had neglected to plot the easement on relevant maps as required to make informed decisions about development; that the new proposal had apartments and streets planned for the easement; she urged the City Manager to get these documents up to snuff.

Sandra Reed stated that she wanted to make Banning beautiful; that folks were getting acquainted with her; that she was committed to making Banning, California beautiful; that she loved Banning and consequently wanted to join a committee to beautify Banning; that she was willing to dedicate her own personal time to do what was required in order to beautify Banning; and that she was ready and could be reached at 951-325-0471.

Ellen Carr spoke first on behalf of Tender Loving Critters animal rescue stating that she was happy to announce that last month Animal Action League spade or neutered 64 critters; that they were still offering half price for microchips, which was only \$8.00 and reminded the community that microchipping was required for dogs in Riverside County; she further commented that Animal Action League will be back June 24 and June 25 or also that if your pet needs an appointment for spade or neuter to call (760) 366-1100.

Ms. Carr also addressed the Council as a Banning resident stating that she wanted to advocate for the Police Dispatchers; that their contract for negotiations was not up yet but when it is to please do the best that you can for them; also stated that they operate under less than ideal situations and yet they remain calm and that they deserve to be recognized.

Valerie Westholder stated that she was going to use as much grace as she could muster; she made comments relative to an issue or comment that Councilmember Happe made at the last Council meeting in relation to accusing folks who had



questions or concerns about the low income housing about them hating people; she commented that she took offense with the accusation Mr. Happe made about people that he did not know.

Unknown Speaker who did not want to provide her name addressed the Council by reading a statement into the record, which is included as part of these minutes and provided hereby in summary format. She commented that she was addressing the Council on behalf of a large number of Banning residents as well as herself; stated she had some concerns about the relationship between Councilmembers and the relationship between City Manager Schulze and Councilmember Peterson.

She spoke about the recent events between City Manager Schulze and Councilmember Peterson and qualified them as shameful, inappropriate and uncalled for; that due to the oath taken it was their responsibility to do what was best for the City; she commented that a new City Manager was hired in the hope of saving the town from past damage, and yet he brought with him his own baggage; stated that people were afraid of speaking at Council meetings; and that finally she wanted to commend the hardworking, dedicated Banning Police Officers, dispatchers, volunteers, lieutenants, commanders, and Chief of Police; that their work did not go unnoticed.

Unknown Speaker commented that he echoed what Ms. Schuler had stated earlier with respect to the accurate minutes including the correspondence; that it was convenient for working people who cannot attend the meetings to have accurate minutes for their reference to know what goes on; he commented that he was not in agreement with using speaker cards because they were meant to intimidate people and cut down on the number of speakers; he inquired of the Council about how many actually get out there and speak with the constituents because that was the only way to know what people want; stated that he had lived in Banning since 1985 and never in all those years had a single Councilmember stop and knock on his door to ask about his concerns; commented that the City needed to encourage more speakers and public participation.

Paul Perkins inquired about the City of Banning now being responsible for the Beaumont Transportation stopping on City limits; commented that he had noticed recently by listening to the meetings, that we seem to have employees that were talking to possible companies that are coming in to associate themselves in projects in Banning that they were guaranteeing this and that he did not think it was necessary to do that; that he was making special reference to the 96 unit apartment complex that was mentioned at the last meeting.

Diego Rose addressed the City Council regarding some of the workshop issues stating that it was important for everyone to know, both public and members of the Council that the first amendment was there to protect speech that was hard, difficult or controversial to say; that there was no need to protect things that were nice, comfortable; also spoke about beautification of Banning and reaffirmed that for every

hour that he gets of Mr. Vela's time, he would donate a tree to the City at his expense; spoke about a couple of projects he would like the City to join him on; he provided his telephone number (909) 915-9708; and stated that he wished to participate in the upcoming clean-up event coordinated by Mayor Pro Tem Andrade; made an announcement that at Marla's in July after he gets married, he is going to start a taco bout it Tuesday in the middle of the Afternoon with the idea being having a meeting of the minds to get together under a comic background with a comic MC and it would entail pragmatic solutions to local problems, which would be the basis for the format; that they would take a dollar for every taco sold and donate it to a local charity of all the participant's choosing.

Nick Parra stated that he was for beatification of Banning as well; spoke regarding the debate at City Council and other meetings; that he concurred that it was important to have debate; that such debate was necessary; that competition of ideas was very important, but that having thick skin was also important; stated that when this Council approves something, it was time to move on; stated that Banning was moving on with new projects as well; that he saw new businesses coming in; and he thanked City Manager Doug Schulze for doing that; stated that his presence was effective, that he is doing good things; that the Council also is doing good things despite the given challenges; that he sees a lot more police officers out in the community.

David Ellis reminded the Council about the seventeen dead trees on San Gorgonio Avenue, which are in the City's right-of-way; spoke about pride in ownership and displaying a positive attitude for people; that the Fire Department had three dead trees downtown, which did not look very appealing; that throughout the City there are numerous trees that are a concern due to the potential fire hazard; inquired about whether or not the City could do something about this; and urged the Council to sharpen the pencil on the water rates.

### **CORRESPONDENCE**

None.

## **VI. CONSENT ITEMS**

Mayor Welch asked if the Council wished to pull any items. Councilmember Peterson requested that item Nos. 4, and 6 be pulled for a clarification.

Mayor Welch open public comment on consent items. Seeing none, he entertained a motion to approve the rest of the consent calendar.

A motion was made by Councilmember Wallace, seconded by Mayor Pro Tem Andrade to approve the rest of the consent calendar as presented. Electronic vote was taken as follows:

AYES:	Happe, Peterson, Wallace, Andrade, & Welch
NOES:	None

ABSTAIN: None  
 ABSENT: None

1. Approval of Regular Meeting – 4/23/19 Minutes

**Action: Approved by Minute Order No. 2019-071**

2. Approval of Special Meeting – 5/14/19 Minutes (Closed Session)

**Action: Approved by Minute Order No. 2019-072**

3. Approval of Regular Meeting – 5/14/19 Minutes

**Action: Approved by Minute Order No. 2019-073**

4. Approval and Ratification of Accounts Payable and Payroll Warrants Issued in the Month of April, 2019. (Pulled)

Councilmember Peterson asked a question relative to an amount of \$1,133.00 for uniform allowance for the Chief and uniforms; he referred to paragraph 6-1 of the Chief's contract relative to a uniform allowance.

Suzanne Cook, Deputy Finance Director stated that the allowance in the contract was to take care of the Chief's uniforms; and that this amount was for the purchase of the uniforms. City Manager Doug Schulze added that as he recalled there was a basic allotment of uniforms to be purchased to start with and then the monthly maintenance thereafter.

There was no public comment.

A motion was made by Councilmember Peterson, seconded by Councilmember Wallace to approve the item as presented. Electronic vote was taken as follows:

AYES: Happe, Peterson, Wallace, Andrade, & Welch  
 NOES: None  
 ABSTAIN: None  
 ABSENT: None

**Action: Approved by Minute Order No. 2019-074**

5. Receive and File Cash, Investments and Reserve Report for April, 2019.

**Action: Received and filed by Minute Order No. 2019-075**

6. Public Works Capital Improvement Project Tracking List for May, 2019. (Pulled)

Councilmember Peterson stated that it has been probably four years since the former Mayor and him were on the public works ad-hoc committee; stated that then the City started approving the water extension to the City limits on East Ramsey and the widening of the road, the center medians, etc.; he inquired about the status of the project five years later; also inquired about the timeframe as to when the City is going to get started with the improvements.

City Manager Doug Schulze commented that the City still had some easement purchases that need to be made; that it had been a couple of months since the Council approved the last easement purchase; and that in his estimation, there are a total of about 8 to 10 different property owners with which the City has to negotiate with and that staff was about 2/3 of the way through that list of property owners; Mr. Schulze stated that with respect to the timeframe for the improvements, he would have to consult with the Public Works Director/City Engineer, Mr. Vela to ascertain when he thinks they will be ready to start construction.

There was no public comment.

A motion was made by Councilmember Peterson, seconded by Councilmember Wallace to approve the item as presented. Electronic vote was taken as follows:

AYES:	Happe, Peterson, Wallace, Andrade, & Welch
NOES:	None
ABSTAIN:	None
ABSENT:	None

**Action: Received and filed by Minute Order No. 2019-076**

7. Receive and File Fire Department Statistics Report for January through April, 2019.

**Action: Received and filed by Minute Order No. 2019-077**

8. Adopt Resolution 2019-09, Adopting an amended Conflict of Interest Code (COI) Containing Revised Designated Positions and Disclosure Categories, and Repealing Resolution No. 2008-128..

**Action: Adopted Resolution No. 2019-09**

## **VII. PUBLIC HEARING(S)**

None.

## **VIII. ANNOUNCEMENTS AND REPORTS**

### **CITY COUNCIL COMMITTEE REPORTS**

Councilmember Happe. No report.

Mayor Pro Tem Andrade reported on having attended the Boys and Girls Club Annual event, and stated that it was a good thing to hear about all of the programs that the Boys and Girls Club offers the community; attended Riverside County Supervisor Jeff Hewett's event, which was locally, and this too was a good networking opportunity; commented that every year, the Council was attending other cities for Memorial Day because the City does not have nor holds any Memorial Day events; she stated that she would like to have the Downtown Ad-hoc Committee look into putting together a Memorial Day event and have the Committee take it on so that we can start planning something for next year; spoke about a beautification event on June 8<sup>th</sup>; she stated that she had spent Memorial Day with her family and that as someone who has family members who have served and who are currently serving, she wanted to honor them by reading a poem by Ralph Blessing titled "*Warriors that we are*" honoring all the men and women who have served and who now serve our nation.

Councilmember Wallace reported having attended the Riverside County Community Action Partnership membership meeting where it was discussed that they will be reaching out to all cities including Banning about different topics such as economic development, beautification projects and other City improvement efforts.

Councilmember Peterson. No report.

Mayor Welch stated that he had had the privilege of attending two functions: 1) the graduation exercises for the extension high school adult school and online studies, commented that it was a tremendous and positive event; 2) he attending the ribbon-cutting event at the Dollar store, which was also a nice event.

#### REPORT BY CITY ATTORNEY

None.

#### REPORT BY CITY MANAGER

City Manager, Douglas Schulze stated he had several items to report some to follow up on and some for the Council's attention; stated that at the last meeting a questions was raised about a utility bill, which was a two months bill during one month period; that the reason for that was that the account was not billed during the month of March for February, which accounted for that person receiving two bills in April; that the account was not billed as it should have been due in part to the rate restructuring that occurred in March; spoke about corrective measures that had been taken about resolving these issues.

Mr. Schulze also provided an update on Director recruitments, stating that recruitment for the Administrative Services Director had been launched and it will close on Friday, July 5, that the recruitment brochure for the Parks and Recreation Director will be

finalized within ten days with the recruitment opening shortly after that; reminded the Council about the community workshop for the former San Gorgonio Inn property to be held on Wednesday, June 5<sup>th</sup>, at 5:30 p.m. at the Boys and Girls Club located at 240 E. Ramsey Street, in Banning; provided an update on the City's ransomware incident stating that IT staff had recovered and restored all systems and that data will be restored within a week's time.

City Manager Douglas Schulze also addressed some of the issues that were raised at this meeting during public comment and stated that with respect to the issue about transit, he stated that we have had an ongoing discussion with the City of Beaumont about the bus service they are running in Banning, Route 2; that service is picking up passengers that would normally be Banning transit customers and paying fares to the City of Banning; that over time the City of Beaumont had proposed that we create our own separate organizations outside the Pass Transit Organization so that each city will be operating its own routes within each city's own jurisdiction; that a report about that matter will be provided to the Council in June. He further commented on the question of employee promises to developers, specifically the Cedar Hills Apartment project, he stated that as he recalled the comment that was made was at the time prior to when the property owner actually purchased the property some two years ago; that we will make sure that employees know that we don't make promises to developers as we don't have the authority to do that, and that said authority rests with the City Council.

### **REPORT OF OFFICERS**

1. Authorize Staff to Utilize the Public Utilities Exemptions (Electric, Sewer, and Water) that Allows for Informal Procurements Without Formal Competitive Bidding or as Provided for in Article 2, Section 3-105 (7) Notes and Exceptions, in the Purchasing Policy No. B-30, Approved by City Council Resolution No. 2018-156 on February 26, 2019 for the Purchase of Certain Supplies, Materials and Equipment for the City's Public Utility Departments.

Tom Miller, Electric Utility Director presented the staff report and answered Council questions relative as to why this was needed; and what specific items would be included under these exemptions.

Public Comment.

Chris Wilson inquired about the specific items that would fall under these exemptions.

A motion was made by Councilmember Peterson, seconded by Councilmember Happe to adopt Resolution No. 2019-57 as presented. Electronic vote was taken as follows:

AYES:	Happe, Peterson, Wallace, Andrade, & Welch
NOES:	None
ABSTAIN:	None
ABSENT:	None

**Action: Adopted Resolution No. 2019-57**

A motion was made by Councilmember Peterson, seconded by Councilmember Wallace to adopt Resolution No. 2019-58 as presented. Electronic vote was taken as follows:

AYES:	Happe, Peterson, Wallace, Andrade, & Welch
NOES:	None
ABSTAIN:	None
ABSENT:	None

**Action: Adopted Resolution No. 2019-58**

2. Withdraw from Membership from the Power Agency of California (PAC) and Terminate the Joint Powers Agreement.

Tom Miller, Electric Utility Director presented the staff report and stated that this was a historical item he had inherited; that back in the 1990's an organization was created between six municipalities, which was called the Power Agency of California (PAC); that the purpose of the Joint Powers Agreement (JPA) was to allow the six cities to work together to do projects of significance to these cities, to his knowledge no projects were done; and that there is no outstanding debt. Commented that this year the newly elected President from the City of Azusa made the suggestion that we dissolve the agency; that as the President, he presented said proposal to the city of Azusa, which by resolution approved the action, which in essence allowed the rest of the cities to withdraw from the PAC; he stated that he was asking for the authority to withdraw from membership and execute whatever actions are deemed appropriate to dissolve the JPA.

Public Comment.

Chris Wilson stated that Mr. Miller got the acronym right SCPPA (Southern California Public Power Authority) that there was no PAC in Southern California; that there was a Northern California PAC so that there was an error on the agenda.

Mr. Miller stated that there were two agencies; one was called the Northern California Power Authority or NCPA, but that this was a third organization under a Joint Powers Agreement called PAC or Power Agency of California. Mr. Wilson stated that he stood corrected on his statement.

A motion was made by Councilmember Peterson, seconded by Councilmember Happe to approve the item as presented. Electronic vote was taken as follows:

AYES: Happe, Peterson, Wallace, Andrade, & Welch  
 NOES: None  
 ABSTAIN: None  
 ABSENT: None

**Action: Adopted Resolution No. 2019-59**

3. Adopt Resolution, Awarding a Professional Services Agreement to MGT Consulting Group for the Enterprise Fund & Internal Service Fund Cost Allocation Study, in the Amount of \$17,050, with an Option for a Full Cost & CFR Part 200 (Federal) Cost Allocation Plan in the Amount of \$3,000 for a Total Not to Exceed Price of \$20,050.

Suzanne Cook, Deputy Finance Director presented the staff report stating that his item had come about because of our general fund transfer; that we had a ballot measure that went in November, which was unsuccessful but that we needed to determine the amount that was allowable to support the services provided by the General Fund to the Enterprise Fund and Internal Service Funds so we decided to issue an RFP to have an independent party establish and maintain well documented the justification to recover the indirect administrative cost in a variety of internal and external circumstances; stated that on February 12, the RFP was issued, a total of twelve responses were received; that an evaluation committee had evaluated these proposal with the top three invited to interviews, and ultimately one company was recommended.

Councilmember asked for clarification about the amount or percentage allowable for recovery; that he was in favor that we do the study, but that the General Fund needed to be reimbursed.

Councilmember Happe too sought clarification as the workings of the transfers and the reimbursements.

City Manager Doug Schulze interjected and stated that what we wanted to do was to find out how much service the General Fund was providing to the utilities, and what the cost of that service is.

**Public Comment**

Jerry Westholder stated that he would like to see an accurate model that we could follow to see what the City should charge the ratepayer; that he wanted to see a model to use so we can be accurate and fair to the ratepayers.

A motion was made by Councilmember Peterson, seconded by Councilmember Wallace to approve the item as presented. Electronic vote was taken as follows:



AYES: Happe, Peterson, Wallace, Andrade, & Welch  
 NOES: None  
 ABSTAIN: None  
 ABSENT: None

**Action: Adopted Resolution No. 2019-60**

**4. Butterfield Specific Plan ("Atwell") Annual Review.**

Adam Rush, Community Development Director presented the staff report and stated that this was the first annual review of what was known as the Pardee Project located on Highland Springs and Wilson; that state law requires an annual review. He further commented that the Pardee Development Agreement was under the sole jurisdiction of the City Council and as such Planning Commission review was not required; he described in detail the specific arrangements with this agreement and provided a brief historical perspective; that this Agreement was entered into on March 27, 2012, with a subsequent revised effective date of February 9, 2015, the City was conducting an annual review following the commencement of construction, which was reviewing performance of the agreement on or about each anniversary date.

Following Mr. Rush's presentation, there was an extensive discussion on the topic. Councilmember Peterson stated that he would have liked to have the settlement agreement included as part of the documents for the item.

Councilmember Peterson further inquired about the issue of the schools (page 407, item 7 public schools) included in the staff report; that the entire project goes into Beaumont Unified School District; that he wanted to see if we can get Pardee to partner with the City of Banning and help us pull our City limit schools back into Banning Unified School District; that this was imperative and it is important that this gets done; that anything that gets built in Banning should belong to Banning. He further inquired about the development impact fees as stated on page 411, item 1.28 of the agenda report.

Mayor Pro Tem Andrade stated she was pleased that Councilmember Peterson had gotten on board requesting that the project boundaries be brought back to the Banning Unified School District, which was something she had advocated about for the past two years; she stated that she was pleased that the 2 x 2 Committee was pushing for this as it was the City Manager.

Councilmember Happe stated that the agreement with the school District was a hot topic and asked if it would be appropriate to hear from the Developer on this matter.

Mike Taylor Division President with Pardee Homes addressed the City Council relative to the issue of the school boundaries for the project. He stated that they had been planning and going through entitlements for many years, so that it was a good thing for Pardee to get started building homes in that area; he commented that he understood

the Council's comments as it related to the schools district boundaries that he had been doing business in the Inland Empire for over 20 years and during that time, they had been involved in numerous projects that had school boundary issues where school boundaries did not match city boundaries; that sometimes boundary lines cross through projects, etc.; that this project was not 100% in the Beaumont boundary.

Mr. Taylor asserted that everything on the East side of Highland Homes about 500 units were within the Banning Unified School District as well as that they had provided a school site for Banning; he stated that what he could say was that this was an issue between the two school districts; that the two school districts needed to come together and discuss this matter. He commented that the Riverside County Board of Education ultimately has to hear any kind of disagreement between the two school districts; that this was not something the developer could dictate to the Board of Education to change school boundaries; that, that is not how it works; that in terms of changing boundaries, that school districts do not like changing them because in doing so they are giving up student enrollment to the other district and there it laid the complexity of the issue because student enrollment numbers translate into funding for any school district.

There was a substantial discussion on this issue with Mayor Pro Tem Andrade taking the lead in inquiring about why the developer could not help the City make this happen; she stated that as a matter of fact it was not just up to the School Board, that until Pardee builds that you have not build yet and therefore you can make that decision in order to rezone it and bring that back into our city; that Banning had always been second fiddle to Beaumont; that if they want to build here then they had to show an incentive.

She further stated that she would like to see Pardee come to the table and meet with the two school districts and start working with the City.

Mr. Taylor reiterated his position that he will be willing to assist in this effort, but if Beaumont was not willing to meet, there was not much he could do; that the Council needed to understand that a developer could not change school district boundaries nor require that the Board of Education do so on behalf of a developer; that it did not work that way; he expressed an interest in perhaps meeting with the City of Banning to help articulate a path forward.

City Manager Douglas Schulze stated that there was a process call territory transfer and that process was for uninhabited land and starts with a petition by the property owner in this case Pardee is the property owner; that we had communicated that to the Banning School District and we requested a meeting with Beaumont School District, the City and Pardee; that a communication was received by the Beaumont Unified School District stating that they were not interested in having a conversation; further, Mr. Schulze stated that the only way for this to move forward was through the petition process, which did not mean that Pardee was making the decision but in this case the two school districts cannot agree or will not agree because one of the district refuses to come to the table, consequently that the purpose of the BOE was that when there are disagreements between school districts for a third party to make the decision.

Other members of the City Council expressed similar concerns with the issue of the school boundaries.

#### Public Comment

Unknown Speaker commented that he agreed that the entire area should be within the Banning School District boundaries.

Paul Perkins commented that Pardee in their advertisement and literature could exclude what school districts are listed until this matter is resolved.

Nick Parra stated that Pardee investing and building homes was a good thing for the City; that he disagreed with the idea that Beaumont should take the school boundaries over the entire area; that we also need to analyze the amount of revenue that was going to Beaumont v. Banning.

A motion was made by Councilmember Wallace seconded by Councilmember Happe to receive and file the item as presented. Electronic vote was taken as follows:

AYES:	Happe, Peterson, Wallace, Andrade, & Welch
NOES:	None
ABSTAIN:	None
ABSENT:	None

**Action: Received and filed by Minute Order No. 2019-78**

#### **IX. DISCUSSION ITEM**

None

**BANNING UTILITY AUTHORITY (BUA) – Next Meeting, June 11, 2019, 5:00 p.m.**

#### **X. ITEMS FOR FUTURE AGENDAS**

1. Website Redesign
2. Golf Carts
3. Wildfire Mitigation Plans
4. Digital Billboards
5. 553 E. Ramsey Receivership

#### **XI. ADJOURNMENT**

By consensus, the meeting was adjourned at 7:31 p.m.

Minutes Prepared by:

---

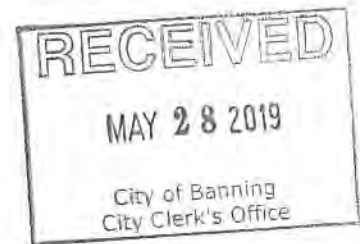
Daryl Betancur, Deputy City Clerk

**These Minutes reflect actions taken by the City Council. The entire discussion of this meeting can be found by visiting the following website:**

**<https://banninglive.viebit.com/player.php?hash=fwbFvee76sWV> by requesting a CD or DVD at Banning City Hall located at 99 E. Ramsey Street.**

**Communications Received from the  
Public  
(City Council meeting of May 28, 2019)**

Inge Schuler  
Banning



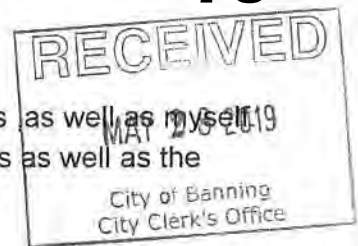
Re: Public Comments. 28 May 2019 City Council meeting

First of all, I should like to commend our Deputy City Clerk for the exceptional detail in the recorded Minutes of the last two regular city council meetings. This is very much appreciated by anyone who has to dig through video recordings of meetings in order to check on necessary documentation. Thank you very much. Also, the inclusion of correspondence is appreciated. I realize that the current City Manager does not want to bother with the official reading into the record of correspondence at city council meetings, but that is a much resented break of our customary practice.

Secondly, I am relieved that the agenda format is returning to the standard OUTLINE practice of Roman Numeral, Capital Letter, Arabic Numeral, Lower Case Letter. I understand there is move toward a new Banning unique system proposed by the city manager, Save it for another planet, please.

Now to a recurring problem of transparency. In our Planning Commission session that had to deal with the proposed 98 apartment project West of Hathaway and South of Hoffer street. We were not told of the easement on Wilson Street that was part of the latest Circulation Element on the General Plan that also involved extensive realignment of gas lines. Apparently, staff neglected to plot the easement on the relevant maps as required to make any informed decisions about development. One existing development has carports built on the easement. The new proposal has apartments and streets planned for the easement. The proponent was not informed. This carelessness and sloppiness of the various departments has to stop. I would not have approved the project if I had known that the easement was violated with the plans. How can Plan Check and Design Review pass through the permit process at city hall, if the underlying maps and general plan are deficient. I realize we have had many changes in staff, but this must not occur again. Our new city manager has his work cut out to get all the documents up to snuff. Please take care of this.

Don't withhold significant information from the Planning Commission.



I'm addressing the Council on behalf of a large number of banning residents as well as myself. We are very concerned about the relationship between the council members as well as the relationship between the city manager and Councilman Peterson.

First, The recent events that have happened between councilman Peterson and manager Schultz (and I'll just leave it at that) has literally been shameful. Completely Inappropriate and uncalled for. That should not have taken place between our city officials that we trust. It seems to be..... we are watching a very sad puppet show! Each of you were elected to a very important position,

can we all please take this seriously!?

You took an OATH! It is your duty and responsibility to do what best for our city... not the lining of your pockets, not for sun lakes steaks, not for business profit, not for ANYTHING other than what is best for BANNING! With that being said, it is alarming that we aren't seeing that happening! You say things are happening for the good of the city yet you can't get along with each other?? How is that?

A new City manager was brought here in hopes to save this town from the damage done by past and, Yes present, officials, and yet brings his own baggage! Having the audacity to come here and mastermind a witch hunt to happen against one of our councilmembers. He should have at least been given time to clean up his trash before moving forward with filling his current position... as well as shown some integrity when it came to disclosing the ethical complaints and on-going back and forth drama he already was involved in with a council member in Bainbridge, WA.

Now in Banning, media AND residents are calling him out for these things and get one response.....

He and his wife getting so upset and down right CRAZY. In fact so crazy, that the Schulzes are now even abusing the judicial system, by trying to falsely and maliciously prosecute one member of our city council!

To go to that extent, and not even reply to the residents and business owners of the city he is supposed to be Managing.... makes us believe that the media is right! Are they wrong!? THIS HAS TO STOP!

Council...

Doug Schulze has taken Banning to a new low point - and there has to be a change! He was supposed to be the change, but he hasn't lived up to it. How are the residents and business owners supposed to be comfortable knowing the fate of banning lies in his hands while all of this is being allowed to happen!? What is attracting business to a city being ran this way?

Please Do what you are obligated to do and do it honestly, compassionately, and do it as a TEAM! Out of everything that these residents want to say, the number one point and issue is to stop any corruption ... stop the harassment.... stop doing the opposite of what you're saying

*Handwritten note:*  
This is the main issue out

you're going to do .... stop making incompetent decisions and stop drinking the "corrupt Kool-Aid"

The fact that people are scared to speak up to their own city officials is embarrassing, pathetic, and just sad. When residents DO come forward with their thoughts and concerns.... LISTEN to them!! Most of these people have lived their whole lives here. They have seen the changes good and bad! It's not too late to Make a positive change and do what's right for our city and make those changes right for yourselves.

My final note: I have to commend our incredibly hard working, dedicated police officers, dispatchers , volunteers, lieutenants, commanders and Chief at Banning PD! Your work does NOT go unnoticed!!



**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**



**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**PREPARED BY:** Laurie Sampson, Acting Deputy City Clerk

**MEETING DATE:** June 11, 2019

**SUBJECT:** Receive and File Contracts Approved Under the City Manager's Signature Authority for the Month of May 2019.

---

**RECOMMENDATION:**

Receive and file Contracts approved under the City Manager's signature authority for the Month of May 2019.

**BACKGROUND:**

City Council requested regular reports of contracts signed under the City Manager's signature authority of \$25,000 or less.

**ATTACHMENT:**

- 1) List of Contracts approved by City Manager

Approved by:

  
 Douglas Schulze  
 City Manager

# **ATTACHMENT 1**

## List of Contracts

Contracts, Change Orders and Sole Sources Approved Within City Manager Signature Authority (2019)

City Manager Approval	Vendor Name	Description of Item/Service	Contact Award Total	Department/Division	Comments
5/15/2019	Packham & Toomey	Inspection/AQMD Cerification	\$ 16,000.00	Public Wroks - Fleet	C00396 - Amendment 1
5/17/2019	Gametime	Playground Improvements	\$ 11,579.37	Community Services - Parks	C00503
5/30/2019	CPS HR	Park & Rec. Director Recruitment	\$ 23,500.00	City Manager's Office - HR	C00526

**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**



**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**PREPARED BY:** Art Vela, Director of Public Works  
Kevin Sin, Senior Civil Engineer

**MEETING DATE:** June 11, 2019

**SUBJECT:** Authorize the City Manager to sign the Notice of Completion for Project No. 2017-16, "Citywide Various Street Improvements" as complete and direct the City Clerk to record the Notice of Completion

**RECOMMENDED ACTION:**

That the City Council accept Project No. 2017-16, "Citywide Various Street Improvements" as complete, authorize the City Manager or his designee to sign the Notice of Completion and direct the City Clerk to record the Notice of Completion.

**BACKGROUND:**

On December 11, 2018, City Council adopted Resolution 2018-154 awarding a Construction Agreement to Onyx Paving Company, Inc. for Project No. 2017-16, "Citywide Various Street Improvements". The project was approved in the amount of \$766,000 with a 10% contingency for a total project budget of \$842,600.

The principal items of work included the grinding of existing asphalt concrete (AC) pavement; installation of new AC; crack sealing of existing AC pavement; removal and replacement of broken sidewalks, driveway approaches, curb and gutters; removal and replacement of access ramps to comply with ADA requirements; installation of new access ramps; repair of potholes and trench repairs (related to water main repairs) on various streets; repainting of existing crosswalks and pavement legends at various locations; and removal and replacement of all affected pavement markings and striping. The work was performed at various locations throughout the City of Banning as shown in Attachment 2.



Project change orders were processed in the amount of \$16,546.31 increasing the contract amount by approximately 2% for a total contract amount of \$782,546.31 and within the approved budget. Change orders addressed items such as additional repairs for potholes; repainting of additional striping and pavement legends; and installation of a new crosswalk, centerline striping and new signs at the intersection of Ramsey Street and Martin Street.

**JUSTIFICATION:**

The lowest qualified bidder, Onyx Paving Company, Inc. was awarded the contract and work was completed on April 10, 2019. Public Works staff verified through inspections that the workmanship, materials, and procedures were satisfactory and that the contractor had met the required contract obligations.

**FISCAL IMPACT:**

The original contract was awarded in the amount of \$766,000 and the final contract amount for this project is \$782,546.31, under the allocated project budget approved under Resolution 2018-154. The project was funded by Measure A, SB 1 and Water Operations funds.

**ALTERNATIVE:**

City Council may elect to not accept the project as complete which would keep the project open and prevent the release of retention funds to the contractor.

**ATTACHMENTS:**

1. Notice of Completion
2. Project Locations

Approved by:

  
\_\_\_\_\_  
Douglas Schulze  
City Manager

# ATTACHMENT 1

*(Notice of Completion)*



1 WHEN RECORDED MAIL TO:

2  
3 Office of the City Clerk  
4 City of Banning  
5 P.O. Box 998  
6 Banning, California 92220  
7

8 FREE RECORDING:  
9 Exempt Pursuant to  
10 Government Code §6103  
11

---

12  
13 NOTICE OF COMPLETION

14 PROJECT NO. 2017-16, "CITYWIDE VARIOUS STREET IMPROVEMENTS"  
15

16  
17 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the OWNER, the City  
18 of Banning, a municipal corporation, pursuant to the provisions of Section 3093 of the Civil  
19 Code of the State of California, and is hereby accepted by the City of Banning, pursuant to  
20 authority conferred by the City Council this June 11, 2019, and the grantees consent to  
21 recordation thereof by its duly authorized agent.  
22

23 That the OWNER, the City of Banning, and Onyx Paving Company, Inc. of Anaheim,  
24 California, the vendee, entered into an agreement dated December 11, 2018, for Project  
25 No. 2017-16, "Citywide Various Street Improvements".  
26

27 The principal items of work includes the grinding of existing asphalt concrete (AC)  
28 pavement; constructing new AC; crack sealing of existing AC pavement; remove and  
29 replace broken sidewalks, driveway approaches, curb and gutters; remove and replace  
30 access ramps to comply with ADA requirements; install new access ramps; repair potholes  
31 and trench repairs (related to water main repairs) on various streets; refresh existing  
32 crosswalks and pavement legends at various locations; and remove and replace all affected  
33 pavement markings and striping in the City of Banning per the City of Banning Standard  
34 Specifications.  
35

1 That the work of improvement was completed on April 10, 2019, for Project No. 2017-16  
2 "Citywide Various Street Improvements":

3 (1) The Nature of Interest was civil improvements completed on April 10, 2019  
4 for Project No. 2017-16, "Citywide Various Street Improvements".

5 (2) That the City of Banning, a municipal corporation, whose address is  
6 Banning City Hall, 99 E. Ramsey Street, Banning, California 92220, is completing work  
7 of improvement.

8 (3) That said work of improvement was performed at Various Locations in  
9 Banning, California 92220.

10 (4) That the original contractor for said improvement was Onyx Paving  
11 Company, Inc. of Anaheim, California, State Contractor's License No. 630360.

12 (5) That Performance and Payment bonds were required for this project.

13 (6) The nature of interest is in fee.  
14

15 Dated: June 11, 2019

16 CITY OF BANNING  
17 A Municipal Corporation  
18  
19  
20

21 By \_\_\_\_\_  
22 Douglas Schulze, City Manager  
23  
24

25 APPROVED AS TO FORM:  
26  
27  
28  
29

30 \_\_\_\_\_  
31 Kevin G. Ennis, Esq., City Attorney  
32 Richards, Watson & Gershon  
33  
34  
35

**JURAT**

State of California  
County of Riverside

Subscribed and sworn to (or affirmed) before me on this 11th day of June, 2019 by  
\_\_\_\_\_ proved to me on this basis of satisfactory evidence to be the  
person(s) who appeared before me.

(S e a l)

\_\_\_\_\_  
Notary Public in and for said County  
and State

STATE OF CALIFORNIA)

) ss

COUNTY OF RIVERSIDE)

DARYL BETANCUR, being duly sworn, deposes and says:

That I am the Deputy City Clerk of the City of Banning, which City caused the  
work to be performed on the real property hereinabove described, and is authorized to  
execute this Notice of Completion on behalf of said City; that I have read the foregoing  
Notice and know the contents thereof, and that the facts stated therein are true based upon  
information available to the City of Banning, and that I make this verification on behalf of  
said City of Banning. I declare under perjury that the forgoing is true and correct.

Executed on June 11, 2019 at Banning, California.

\_\_\_\_\_  
Daryl Betancur, Deputy City Clerk

City of Banning, California

# ATTACHMENT 2

*(Project Locations)*

City of Banning

Public Works Department

Engineering Division

Project No. 2017-16 "Citywide Various Streets Improvements"

**List of Streets Improvements****A.C. Overlay Streets**

Street Name	Begin	End	CAP Area (S.F.)	R & R (Ton)	CAP (Ton)
Theodore Street (2" CAP)	Alessandro Road	Almond Way	84,010	25	1,103
8th Street (2" CAP)	Lincoln Street	Westward Ave	40,980	47	538
Charles Street (2" CAP)	Hargrave Ave	1037 E. Charles St	33,660	12	442
Wesley Street (2" CAP)	Hargrave Ave	1211 E. Wesley St	43,260	24	568
First Street (2" CAP)	Livington Street	Williams Street	66,780	0	876
Second Street (2" CAP)	Hays Street	Williams Street	10,170	0	133

**Total:****278,860****108****3,660**

City of Banning  
Ramsey Street Re-striping List

Street Name	Intersect at	Stop Bar	Stop Legend	X-walk (W)	Arrow (L/R)	"ONLY" Legend	Speed Limit Legend
Ramsey Street:	Hathaway	1	1				
	Phillips	1	1				
	Hargrave			4	9		
	Livington		1				
	Alola	1	1				
	Martin			2			
	First		1				
	Fourth				2		
	Sixth		1	2			
	e/o Eighth						1
	Eighth			4	10	2	
	947 W. Ramsey						1
	12th	1	1		1		
	1529 W. Ramsey						1
	16th		1	2	1		
	Roberge		2	1	3		
	22nd			4	9		
	2301 W. Ramsey				2	1	
	Sunrise		1	1	4		
	Mountain View		1	1			
	Woodland		1	1	4		
	Park		1	1	4		
	Morongo		1	1	4		
	3055 W. Ramsey				2		
	e/o Sunset						1
	Sunset	2	1	4	12		
	w/o Sunset						1
	3705 W. Ramsey						1
	Omar	1	1				
	w/o Omar						1
	Highland Home	1	1		4		
	4240 W. Ramsey						1
	6350 W. Ramsey						1
	Lori	1	1		4		
TOTAL		9	19	28	75	3	9

## Street Repair List

Line No.	R & R AC Locations	Size Patch			Sq. Ft.	Approx. Depth (inches)	AC Tonnage
	<b>Sun Lakes</b>						
1	5435 Moody Drive	7	X	5	35	4	0.88
2	5577 Moody Drive	7	X	6	42	4	1.05
3	1802 Masters Drive	5	X	7	35	4	0.88
4	1064 Southern Hills Dr	9	x	11	99	4	2.48
5	5295 Mission Hills	7	x	7	49	4	1.23
6	964 W. Olympic Ave	6	x	8	48	4	1.20
7	1702 S. Fairway Oaks	7	x	9	63	4	1.58
8	5009 Hilton Head Dr	7	x	7	49	4	1.23
9	1190 S. Fairway Oaks	6	x	7	42	4	1.05
10	965 Southern Hills	7	x	11	77	4	1.93
11	4833 Mehlhorn Cir	5	x	12	60	4	1.50
12	682 S. La Quinta	6	x	8	48	4	1.20
13	1630 Fairway Oaks	6	x	7	42	4	1.05
14	6151 Inverness	6	x	9	54	4	1.35
15	5206 E. Lake Ct	7	x	8	56	4	1.40
16	5212 E. Lake Ct	10	x	10	100	4	2.50
17	708 Big Springs	7	x	7	49	4	1.23
18	5050 Singing Hills	7	x	7	49	4	1.23
19	4993 W. Olympic Ave	6	x	6	36	4	0.90
20	1801 Master Dr	6	x	13	78	4	1.95
21	5275 bw pinehurst	9	x	7	63	4	1.58
22	1321 Cypress Point	6	x	8	48	4	1.20
23	5016 Oakhurst Ave	7	x	8	56	4	1.40
24	5239 Riviera	8	x	7	56	4	1.40
25	537 La Quinta	6	x	7	42	4	1.05
26	672 La Quinta	6	x	8	48	4	1.20
27	1216 Fairway Oaks	7	x	9	63	4	1.58
	<b>South of Freeway</b>						
28	497 Cherokee Circle	5	X	6	30	4	0.75
29	497 Sioux Circle	5	X	7	35	4	0.88
30	130 E. Charles Street	4	X	9	36	6	1.35
31	1381 S. Hermosa Street	5	X	7	35	4	0.88
32	1358 South Hermosa Avenue	10	X	28	280	4	7.00
33	3062 Mohawk Road	7	X	9	63	4	1.58



## Street Repair List

Line No.	R & R AC Locations	Size Patch			Sq. Ft.	Approx. Depth (inches)	AC Tonnage
34	1274 W. Barbour Street	6	X	6	36	4	0.90
35	Adams Avenue & Lincoln Street	3	X	8	24	6	0.90
36	1376 E. Lincoln Street	5	X	7	35	6	1.31
37	1722 W. Lincoln Street	4	X	6	24	6	0.90
38	1722 Lincoln Street	9	X	10	90	6	3.38
39	275 E. Lincoln Street	4	X	8	32	4	0.80
40	City Corporate Yard (Fuel Island)	2	X	6	12	6	0.45
41	City Corporate Yard (Fuel Island)	5	X	16	80	6	3.00
42	1184 Lincoln St. (Water Service)	3	X	25	75	6	2.81
	<b>North of Freeway</b>						
43	1045 N. Elisa Dawn Drive	4	X	8	32	4	0.80
44	1050 N. Elisa Dawn Drive	6	X	8	48	4	1.20
45	4897 W. Meadow Way	6	X	6	36	4	0.90
46	425 San Andreas Road (hydrant valve)	2	X	3	6	4	0.15
47	Livingston Street Alley	12	X	9	108	4	2.70
48	3403 West Ramsey (Behind stores in alley - 10x10, in Ramsey - 5x5)	10	X	10	100	4	2.50
49	1484 W. Ramsey Street (Back - Sears)	7	X	5	35	4	0.88
50	1484 W. Ramsey Street (Back - Sears)	7	X	9	63	4	1.58
51	1510 W. Ramsey Street (Back - Massage)	18	X	40	720	4	18.00
52	1502 W. Ramsey Street (Cabinet Outlet)	8	X	40	320	4	8.00
53	1496 West Ramsey Street (Back - Little Caesars)	6	X	8	48	4	1.20
54	2907 George Street. just East of Sylvan Avenue (14x16 + 10x60)				824	6	30.90
55	Pizza Hut - Ramsey Street (12x140 + 10x60)				2280	6	85.50
56	Sizzler - Ramsey Street (12x85 + 5x9 + 6x60)				1425	6	53.44
	<b>Others (W/WW)</b>						
57	3485 W. Ramsey Street (N. side of Ramsey)	10	X	10	100	4	2.50
58	2822 W. Ramsey Street (at Morongo)	6	X	45	270	6	10.13
59	16th and Ramsey (E/B Lane)	35	X	12	420	6	15.75
60	Gilman and Fourth	12	x	14	168	4	4.20



## Street Repair List

Line No.	R & R AC Locations	Size Patch			Sq. Ft.	Approx. Depth (inches)	AC Tonnage
61	1939 W. Ramsey	22	x	4	88	6	3.30
62	235 N. Marian Way	9	x	10	90	3	1.69
63	777 N. Hargrave	10	x	14	140	6	5.25
64	490 Roosevelt	5	x	8	40	3	0.75
65	847 W. Nicolet (7x15 + 7x9)				168	4	4.20
66	4905 Spring View Dr	9	x	12	108	3	2.03
67	1092 Dysart	7	x	7	49	3	0.92
68	4th and Theodore	6	x	11	66	4	1.65
69	4th and Theodore	6	x	8	48	4	1.20
70	1535 Williams	9	x	6	54	4	1.35
71	1535 Williams	9	x	10	90	4	2.25
72	535 N. Hargrave	6	x	9	54	6	2.03
73	498 S. Soboba Dr	6	x	8	48	4	1.20
74	423 Santa Rita Pl	6	x	8	48	3	0.90
75	423 Santa Rita Pl	6	x	12	72	3	1.35
76	876 N. Alesandro	7	x	10	70	4	1.75
77	4956 Corral Cir	6	x	7	42	3	0.79
78	945 Via Panorama	6	x	7	42	3	0.79
79	517 E. George	6	x	8	48	4	1.20
80	8th and Ramsey	6	x	4	24	5	0.75
81	3742 Cypress	7	x	8	56	4	1.40
82	380 W. Barbour St	8	x	6	48	4	1.20
83	Hargrave and George	10	x	20	200	6	7.50
84	East of 360 E. Nicolet (8x9 + 6x7 + 4x10 + 4x9 + 4x4)				266	4	6.65
85	2045 Murray	9	x	24	216	4	5.40
86	2045 Murray	7	x	8	56	4	1.40
87	Sun Lake Blvd & Highland Springs	4	x	5	20	6	0.75
88	1174 N. Florida	6	x	9	54	4	1.35
89	289 E. Meadow Lark Ln	5	x	8	40	4	1.00
90	289 E. Meadow Lark Ln	10	x	8	80	4	2.00
91	496 N. Florida	6	x	8	48	4	1.20
92	1512 E. Nicolet	6	x	5	30	4	0.75
93	384 N. 5th St	3	x	3	9	4	0.23
94	384 N. 5th St	6	x	7	42	4	1.05

## Street Repair List

Line No.	R & R AC Locations	Size Patch			Sq. Ft.	Approx. Depth (inches)	AC Tonage
95	176 Lincoln St (Employee parking lot)	15	x	10	150	4	3.75
96	2320 Hays	3	x	4	12	3	0.23
97	2320 Hays	3	x	8	24	3	0.45
98	2290 Hays	3	x	5	15	3	0.28
99	2275 Hays	3	x	3	9	3	0.17
100	2280 Hays	3	x	5	15	3	0.28
101	1150 Charles	6	x	8	48	4	1.20
102	565 N. Hargrave	20	x	6	120	6	4.50
103	1581 N. Blanchard	5	x	11	55	4	1.38
104	628 S. 8th St	4	x	10	40	5	1.25
105	Mountain & Cypress	11	x	15	165	4	4.13
106	Mountain & Cypress (x-gutter; pcc)	6	x	12	72	4	1.80
107	1711 Durward	5	x	8	40	4	1.00
108	Indian School Ln & Alessandro	6	x	7	42	4	1.05
109	885 W. Hoffer	8	x	9	72	4	1.80
110	Hargrave b/w Plaza & Lincoln	6	x	7	42	6	1.58
111	Florida & King	7	x	12	84	4	2.10
112	235 N. San Gorgonio	6	x	9	54	5	1.69
113	Wastewater Plant (inside)	8	x	8	64	4	1.60
114	525 S. Hermosa	6	x	8	48	4	1.20
115	680 W. Williams (on 7th St)	6	x	4	24	4	0.60
116	3407 W. Jacinto View	6	x	7	42	4	1.05
117	339 E. Meadowlark Ln	9	x	10	90	4	2.25
118	339 E. Meadowlark Ln	9	x	7	63	4	1.58
119	3333 W. Ramsey	3	x	5	15	6	0.56
120	3333 W. Ramsey	3	x	20	60	6	2.25
121	1069 W. Williams	6	x	7	42	4	1.05
122	1069 W. Williams	6	x	4	24	4	0.60
123	513 N. Evans St	8	x	10	80	4	2.00
124	1403 W. George	9	x	12	108	4	2.70
125	Williams and Alessandro	3	x	5	15	4	0.38
126	3221 W. Nicolet	7	x	9	63	4	1.58
127	1446 N. 8th St	7	x	7	49	5	1.53
128	327 N. 12th St	8	x	12	96	4	2.40
129	526 Indian School Ln	11	x	7	77	4	1.93

## Street Repair List

Line No.	R & R AC Locations	Size Patch			Sq. Ft.	Approx. Depth (inches)	AC Tonnage
130	526 Indian School Ln	7	x	28	196	4	4.90
131	757 W. Indian School Ln	9	x	17	153	4	3.83
132	485-505 S 22nd St (2x7x8 + 2x5x6)				172	5	5.38
133	Gilman and Durward	9	x	11	99	4	2.48
134	5297 W. Wilson	6	x	11	66	4	1.65
	<b>Others (SM)</b>						
135	145 Sunrise	8	x	9	72	4	1.80
136	1692 W. Lincoln	6	x	9	54	4	1.35
137	Hargrave and Westward	7	x	8	56	6	2.10
138	1581 W. Nicolet	4	x	11	44	4	1.10
139	1578 W. Nicolet	6	x	7	42	4	1.05
140	1535 W. Nicolet	10	x	11	110	4	2.75
141	1532 W. Nicolet	7	x	10	70	4	1.75
142	1064 W. Nicolet	6	x	7	42	4	1.05
143	839 N. Allen	5	x	8	40	3	0.75
144	s/w corner of Gilman & Weaver	7	x	11	77	4	1.93
145	411 Marian Way	4	x	11	44	3	0.83
146	411 Marian Way	5	x	7	35	3	0.66
147	1326 W. Nicolet	7	x	5	35	4	0.88
148	1326 W. Nicolet	2	x	3	6	4	0.15
149	Nicolet and 14th St	4	x	6	24	4	0.60
150	Nicolet and 12th St	4	x	6	24	4	0.60
151	1578 W. Williams	6	x	7	42	4	1.05
152	1578 W. Williams	4	x	11	44	4	1.10
153	1578 W. Williams	5	x	6	30	4	0.75
154	1109 W. Nicolet	13	x	7	91	4	2.28
155	496 E. George	6	x	9	54	4	1.35
156	2356 W. Hays	9	x	10	90	3	1.69
157	164 22nd St	3	x	12	36	5	1.13
158	271 Meadowlark Ln	8	x	15	120	3	2.25
159	379 Santa Rita Pl	5	x	9	45	3	0.84
160	353 Lombardy	4	x	4	16	4	0.40
161	98 N. 21st St	10	x	8	80	4	2.00
162	98 N. 21st St	10	x	15	150	4	3.75

Street Repair List

Line No.	R & R AC Locations	Size Patch			Sq. Ft.	Approx. Depth (inches)	AC Tonage
	TOTAL + 5%						505.65

**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**



## CITY OF BANNING CITY COUNCIL REPORT

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**PREPARED BY:** Adam Rush, AICP, Community Development Director

**MEETING DATE:** June 11, 2019

**SUBJECT:** ADOPTION OF RESOLUTION 2019-\_\_ TO APPROVE THE CEDAR HILLS APARTMENTS ("PROJECT") GENERAL PLAN AMENDMENT 18-2504; ZONE CHANGE 18-3503; DESIGN REVIEW 18-7011; AND ENVIRONMENTAL ASSESSMENT 18-1508 FOR THE PROPOSED DEVELOPMENT OF A 96-UNIT APARTMENT FACILITY AND ASSOCIATED INFRASTRUCTURE ON 7.08 ACRES OF LAND WITHIN THE LOW DENSITY RESIDENTIAL (LDR) LAND USE DISTRICT (APN 534-283-011 AND 534-283-014)

### RECOMMENDED ACTION:

Staff recommends that the City Council:

Continue the public hearing and project discussion to the June 25, 2019 City Council Meeting, at the request of the project applicant.

### PROJECT / APPLICANT INFORMATION:

**Project Applicant:** John and Diana Hanna  
16197 Krameria Avenue  
Riverside, CA 92504

**Property Owner:** John and Diana Hanna  
16197 Krameria Avenue  
Riverside, CA 92504

**Project Location:** The eastern portion of the City on approximately 7.08 acres. The Project site is located south of East Hoffer



Street, and west of North Hathaway Street in the City of Banning, California.

APN Information: The affected parcels include; 534-283-011 and 534-283-014.

**APPLICANT'S REQUEST:**

The applicant is requesting consideration of a Mitigated Negative Declaration (MND) and Mitigation and Monitoring Report and Program (MMRP) for a project proposing a General Plan Amendment and Zone Change to change the zoning and land use designation from Low Density Residential (LDR) (0-5 DU/AC) to High Density Residential (HDR) (11-18 DU/AC) and Design Review for the construction of a 96-unit apartment complex with Club House, Swimming Pool, and All Purpose Court on 7.08 acres of land located south of East Hoffer Street and west of North Hathaway Street (APN's 534-283-011, 534-283-014).

**ATTACHMENTS:**

1. May 14, 2019 City Council Staff Report

Approved by:

  
\_\_\_\_\_  
Douglas Schulze  
City Manager

**ATTACHMENT 1**

City Council Staff Report  
(May 14, 2019)





**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**PREPARED BY:** Adam Rush, AICP, Community Development Director  
Mark de Manincor, Contract Planner

**MEETING DATE:** May 14, 2019

**SUBJECT:** CEDAR HILLS APARTMENTS (THE PROJECT)  
GENERAL PLAN AMENDMENT 18-2504; ZONE CHANGE  
18-3503; DESIGN REVIEW 18-7011; AND  
ENVIRONMENTAL ASSESSMENT 18-1508 FOR THE  
PROPOSED DEVELOPMENT OF A 96-UNIT APARTMENT  
FACILITY AND ASSOCIATED INFRASTRUCTURE ON  
7.08 ACRES OF LAND WITHIN THE LOW DENSITY  
RESIDENTIAL (LDR) LAND USE DISTRICT (APN 534-283-  
011 AND 534-283-014)

**RECOMMENDED ACTION:**

Staff recommends that the City Council:

1. Adopt Resolution 2019-\_\_\_\_ to approve General Plan Amendment 18-2504, Design Review 18-7011; and adopt a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (Environmental Assessment 18-1508) for the Cedar Hills Apartment Project; and
2. Approve Ordinance 1543 to approve Zone Change 18-3503 to amend the Zoning Map, Title 17 of the Banning Municipal Code for two lots totaling 7.08 acres located south of East Hoffer Street and west of North Hathaway Street, from Low Density Residential (LDR) to High Density Residential (HDR).

**PROJECT / APPLICANT INFORMATION:**

Project Applicant: John and Diana Hanna  
16197 Krameria Avenue  
Riverside, CA 92504

Property Owner: John and Diana Hanna

16197 Krameria Avenue  
Riverside, CA 92504

**Project Location:** The eastern portion of the City on approximately 7.08 acres. The Project site is located south of East Hoffer Street, and west of North Hathaway Street in the City of Banning, California.

**APN Information:** The affected parcels include; 534-283-011 and 534-283-014.

### **APPLICANT'S REQUEST:**

The applicant, is requesting consideration of a Mitigated Negative Declaration and Mitigation and Monitoring Report and Program for a project proposing a General Plan Amendment and Zone Change to change the zoning and land use designation from Low Density Residential (LDR) (0-5 DU/AC) to High Density Residential (HDR) (11-18 DU/AC) and Design Review for the construction of a 96-unit apartment complex with Club House, Swimming Pool, and All Purpose Court on 7.08 acres of land located south of East Hoffer Street and west of North Hathaway Street (APN's 534-283-011, 534-283-014).

### **PROJECT BACKGROUND AND SETTING:**

The site is currently vacant with no visual sign of past development. The site has been recently disked, for weed abatement and there is sparse vegetation present. A few rock and debris piles are present onsite. The property slopes slightly downward from northwest to southeast. The highest point at the northwest corner is 2,369 feet above mean sea level (amsl) and the low point at the southeast corner is 2,331 feet amsl. The property is adjacent to East Hoffer Street and North Hathaway Street which are both improved streets. The project consists of two lots that create an L shape which are conditioned to be merged prior to final inspection and/or occupancy of the site. With the two parcels merged, the site will consist of 7.08 gross acres. Northeast of and adjacent to the site, off-site but within the L shape, is a single-family residence. To the north, northwest and west are existing single-family homes. South of the project site is an existing Apartment Complex and to the east is the Morongo Band of Mission Indians Reservation. North of the project site is vacant land.

The site is currently zoned, Low Density Residential (LDR) which allows for 0-5 single-family homes per acre. The project is a proposal to construct a 96-unit multi-family apartment complex, therefore a General Plan Amendment and Zone Change are required. The applicant proposes to change the General Plan/Zoning to, High Density Residential (HDR) which allows for 11-18 units per acre.

The project proposes 96 two-bedroom multi-family units of 910 square feet each. Tenants will enter from North Hathaway Street to a circle drive that allows ingress to the left or right through secured gates and to parking areas. In front of the gates is a parking area for the 2,600 square foot Club House with Leasing Office. On either side of the Club House there will be four 16-unit buildings. Behind the Club House and between the four 16-unit buildings will be a swimming pool and multi-use court. Another four 8-unit buildings will be located north of the 16-unit buildings, all totaling 96-units. There is a second gate at East Hoffer Street that provides vehicle access to and from the parking areas. A table of surrounding land uses is below.

The applicant has submitted a phasing plan for the development of the project. Phase 1 consists of the club house, swimming pool, two 16-unit apartment buildings, 70 parking spaces and related infrastructure. Phase 2 consists of the multi-purpose court, two 16-unit apartment buildings and 80 parking spaces. The third and final phases consists of four 8-unit apartment buildings and 75 parking spaces.

#### **LAND USE SUMMARY TABLE**

	<b>Existing Land Use</b>	<b>Zoning Designation</b>	<b>General Plan Designation</b>
<b>Subject Site</b>	Vacant	Low Density Residential (LDR)	LDR
<b>North</b>	Vacant Land and Developed Single-Family Residential	LDR/Industrial-Mineral Resources (IMR)	LDR/IMR
<b>Northeast</b>	Developed Single-Family Residential	IMR	IMR
<b>Northwest</b>	Developed Single-Family Residential	LDR	LDR
<b>South</b>	Apartments/Single-Family Residential	LDR, High Density Residential (HDR)	LDR, HDR
<b>East</b>	Vacant	Tribal Land	Outside the City Boundary
<b>West</b>	Developed Single-Family Residential	LDR	LDR

#### **ANALYSIS:**

##### **General Plan Amendment/Zone Change**

Due to the applicant's request, to allow a High-Density Residential (HDR) project in the Low-Density Residential (LDR) zone, a General Plan Amendment and Zone Change application has been submitted. In California, each jurisdiction is allowed four General Plan Amendments per year pursuant to California Government Code

Section 65358 (b) which states, “no mandatory element of a general plan shall be amended more frequently than four times during any calendar year. Subject to that limitation, an amendment may be made at any time, as determined by the legislative body. Each amendment may include more than one change to the general plan.” This General Plan Amendment/Zone change request represents the second Amendment for the year (2019).

In accordance with Banning Municipal Code Section 17.64.010, “Purpose of General Plan Amendments, (A) The General Plan is the comprehensive long-term plan for the physical development of the City and lays the basic framework for all subsequent planning actions taken by the City. Since the City Council is desirous of proper development within the City and wishes to continue to encourage the development of appropriate projects, it becomes necessary to regulate such development so that it is properly integrated into the City’s long term vision and planning process.” As stated above, it is the responsibility of the Planning Commission and City Council to determine whether this project is appropriate, proper and fits within the long term vision of the City.

Findings for or against the project can be found in the attached City Council Resolution 2019-\_\_\_\_.

#### Design Review

Pursuant to Banning Municipal Code (BMC) Section 17.56.010, The purpose of the Design Review is to:

1. Establish design review procedures for development proposals.
2. Assure that proposed projects conform to development standards and design guidelines.
3. Focus on community design principles which result in creative, imaginative solutions which establish quality design for the City.
4. Promote the order and harmonious appearance of structures, landscaping, parking areas, etc; and
5. Maintain the public health, safety and general welfare and property throughout the City.

The project is found to be consistent with development standards as demonstrated in the Development Standards Table below. The project meets or exceeds, lot size, setbacks, density, width, depth, lot coverage, parking, landscaping and all other standards.



DEVELOPMENT STANDARDS TABLE

Description	LDR	HDR	Proposed
Min. Lot Size (AC. Or S.F) SFR/MFU	7,000 S.F./2 AC.	7,000 S.F.	7.04 AC.
Max. Density (Units/AC.)	0-5	11-18	14
Min. Lot Width (Feet)	70	150	330
Min. Lot Depth (Feet)	90	100	330
Min. Front Setback (Feet)	20	15	164.5
Min. Rear Setback (Feet)	15	10	61
Min. Side Yard Setback (Feet)	10	5	52
Min. Street Side (Feet)	15	10	N/A
Max Bldg. Coverage (%)	40	40	21.29
Max. Height (Stories/Feet)	2/35	4/60	2/30.5
Max. Fence/Wall Height (Feet)	6	6	6

PARKING SUMMARY TABLE

UNITS	REQUIRED	PROPOSED
2bd (Covered)	2(96) = 192	192
Guest (Uncovered)	4/96 = 24	24
Club House	9	9
	225	225

LANDSCAPE/OPEN SPACE SUMMARY TABLE

TYPE	AREA	REQUIRED	PROPOSED
SITE	308,404 S.F.	92,521 S.F. (30%)	99,029 S.F.
Notes: Landscape shall be designed in accordance with Municipal Code chapter 17.32			

Design Guidelines

According to the Multi-family site planning section of the Design Guidelines, "Residential developments surrounded by long high walls, parking lots, and rows of carports along public streets are examples of practices to be avoided." The proposed project does not include parking lots and rows of carports along public streets, although it does include long high walls adjacent to existing residential development to mitigate for noise impacts. These walls will be six-feet tall and made of high quality decorative block. Along the western boundary of the project site the six-foot tall block wall will be elevated by a three-foot tall retaining wall. The six-foot tall block wall along the southern boundary of the project site will be elevated by an eight-foot tall retaining wall. The walls will be set back from the top of the retaining walls by a five-foot landscape buffer. These retaining walls are essential as they allow for the height required to grade the property to drain, storm water flows, into the two detention basins along the southeastern boundary of the project site.

The proposed project design should include significant landscape and hardscape elements with clearly identifiable access driveways, convenient and accessible parking, landscaped and screened parking. The project consists of three amenities as required for multi-family projects that have between 51 and 100 units. The three amenities are; clubhouse, swimming pool and multi-use court. Parking and trash enclosures are conveniently located throughout the site. Landscaping will screen parking areas, trash enclosures and detention basins.

### **ENVIRONMENTAL DETERMINATION:**

#### **California Environmental Quality Act (CEQA)**

The proposed General Plan Amendment No. 18-2504, Zone Change 18-3503 and Design Review 18-7011 are considered a "project" as defined by the California Environmental Quality Act ("CEQA") (Public Resources Code § 21000 *et seq.*). An Initial Study (EA 18-1508) has been prepared and made available for public review beginning on March 8, 2019 and closing on March 28, 2019.

Based upon analysis contained in the Initial Study, staff determined that any potentially significant effects on the environment would be reduced to less than significant levels by mitigation measures incorporated in the Initial Study and that the preparation of a Mitigated Negative Declaration (MND) was appropriate. All mitigation measures are carried forward into project Conditions of Approval. A Mitigation Monitoring Report and Program (MMRP) has also been prepared, as required by CEQA.

### **MULTIPLE SPECIES HABITAT CONSERVATION PLAN (MSHCP):**

The project is located outside of any MSHCP criteria cell area's and plan compliance is provided through payment of the MSHCP Mitigation Fee at the time of building permit issuance and the attached Mitigation and Monitoring Report and Program. According to the Initial Study, surveys for the Burrowing Owl and Migratory Birds are required as part of the Mitigation and Monitoring Report and Program. With conformance to the Conditions of Approval and Mitigation Measures contained in the Mitigation Monitoring Report and Program, the project will be compliant with MSHCP.

### **AIRPORT LAND USE COMMISSION**

On October 11, 2018 the Riverside County Airport Land Use Commission (ALUC) found General Plan Amendment 18-2504 and Zone Change 18-3503, consistent with the 2004 Banning Municipal Airport Land Use Compatibility Plan, as amended in 2016. The same day, ALUC found the Design Review, conditionally consistent with the 2004 Banning Municipal Airport Land Use Compatibility Plan, as amended in 2016 subject to conditions which are listed in the projects conditions of approval

and Mitigation Measures listed in the Initial Study and Mitigation Monitoring Report and Program.

### **PUBLIC COMMUNICATION**

The proposed General Plan Amendment, Zone Change and Design Review for construction of a 96-unit apartment complex with 2 bedroom units and associated improvements was advertised in the Record Gazette newspaper on May 3, 2019 (Attachment 5). As of the date of this report, staff has received three comment letters. 1. South Coast Air Quality Management District (SCAQMD). 2. FEMA. 3. Brent Bumpus. Lilburn Corporation, who prepared the Air Quality/Greenhouse Gas Report, has prepared a response to SCAQMD's comments which are attached to this Staff Report and incorporated into the Final MND (Initial Study) and conditions; The FEMA comment does not apply as this project is not in a flood zone; and, a Staff response is attached to this Staff Report for the comment letter received by Mr. Bumpus.

### **COMMISSION RECOMMENDATION:**

On April 3, 2019, the City of Banning Planning Commission adopted Resolution 2019-05 by a 5-0-0 vote, recommending that the City Council of the City of Banning adopt a Mitigated Negative Declaration and Mitigation Monitoring Report and Program and approve General Plan Amendment 18-2504, Zone Change 18-3503 and Design Review 2018-7011 for the Cedar Hills Apartments Project.

### **FISCAL IMPACT:**

The Cedar Hills Apartments project consists of a High Density Residential, 96-Unit Apartment Complex on 7.08-acres of land. Issuance of grading, building, and other permits will result in additional revenues for the City, as will increase property tax revenues and create permanent and temporary jobs within the City.

### **OPTIONS:**

1. Approve as recommended
2. Do not approve and provide alternative direction.

Approved by:

---

Douglas Schulze  
City Manager

**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**





**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**PREPARED BY:** Adam B. Rush, Community Development Director

**MEETING DATE:** June 11, 2019

**SUBJECT:** ADOPTION OF RESOLUTION 2019-\_\_ APPROVING TENTATIVE TRACT MAP (TTM) 36710, VARIANCE 19-3001, MITIGATED NEGATIVE DECLARATION (MND) AND MITIGATION MONITORING AND REPORTING PROGRAM (MMRP) FOR A PROPOSAL TO SUBDIVIDE FOUR LOTS TOTALING 10.6-ACRES INTO 39 SINGLE-FAMILY RESIDENTIAL LOTS AND THREE LETTERED LOTS AND A VARIANCE TO ALLOW FOR A REDUCED LOT SIZE AND WIDTH FOR LOT 7, ASSESSOR'S PARCEL NUMBER'S 534-183-014, 534-200-004, 534-200-008 AND 534-200-047

**RECOMMENDED ACTION:**

Staff recommends that the City Council adopt Resolution 2019-\_\_, taking the following actions:

- I. Find that in accordance with CEQA adopting a Mitigated Negative Declaration and Mitigation Monitoring Report and Program for the project.
- II. Approve Tentative Tract Map 36710 to subdivide approximately 10.6-acres into 39 single-family residential lots in the Low Density Residential (LDR) General Plan and Zone.
- III. Approve a Variance 19-3001 to authorize a reduction in the minimum square footage and minimum width for residential lot number seven.

**PROJECT / APPLICANT INFORMATION:**

Project Applicant: United Engineering Group  
8885 Haven Avenue, Suite 195  
Rancho Cucamonga, CA 91730

Property Owner: RMG Residential 2010, LLP  
8800 N. Gainey Center Drive, Suite 255  
Scottsdale, AZ 85258

APN Information: 534-183-014, 534-200-004, 534-200-008, 534-200-047

### **APPLICANT'S REQUEST:**

The applicant is requesting consideration of a Mitigated Negative Declaration and Mitigation Monitoring Report and Program for a project proposing to subdivide four existing parcels, totaling 10.6-acres, into 39 single-family residential lots within the Low Density Residential (LDR) General Plan and Zone. The application also includes a Variance application (19-3001) to allow for a reduction in the minimum size and minimum width for residential lot seven.

### **PLANNING COMMISSION RECOMMENDATION:**

The project was considered at the May 1, 2019 Planning Commission meeting. At the meeting, the Planning Commission voted 5-0-0 to recommend approval of the project to the City Council. During the Commission's hearing, modifications were made to the recommended set of Conditions to provide clarity on the existing Edison easement that traverses from south to north, between lots 8-19.

### **ENVIRONMENTAL DETERMINATION:**

#### **California Environmental Quality Act (CEQA)**

The proposed Tentative Tract Map 36710 and Variance 19-3001 are considered a "project" as defined by the California Environmental Quality Act (CEQA) Public Resources Code § 2100 et seq. An Initial Study has been prepared and made available for public review beginning on August 11, 2017 and closing on August 31, 2017.

Based upon analysis contained in the Initial Study, staff determined that any potentially significant effects on the environment would be reduced to less than significant levels by mitigation measures incorporated in the Initial Study and that the preparation of a Mitigated Negative Declaration (MND) is the appropriate environmental determination. All mitigation measures are carried forward into project Conditions of Approval and a Mitigation Monitoring Report and Program (MMRP) has also been prepared, as required by CEQA.

### **FISCAL IMPACT:**

The review, processing, and staff time dedicated to this entitlement process are covered through the payment of development review fees; which are paid by the applicant.

**OPTIONS:**

1. Approve as recommended
2. Do not approve and provide alternative direction.

**ATTACHMENTS:**

1. Planning Commission Staff Report
2. Planning Commission Minutes (May 1, 2019)
3. Land Use Exhibits
4. City Council Resolution No. 2019-\_\_\_\_
5. Project Plans
6. Public Hearing Notice
7. Notice of Determination (NOD)

Approved by:

  
\_\_\_\_\_  
Douglas Schulze  
City Manager

## **ATTACHMENT 1**

Planning Commission Staff Report



**CITY OF BANNING  
PLANNING COMMISSION  
STAFF REPORT**

**TO:** PLANNING COMMISSION

**FROM:** Adam B. Rush, Community Development Director

**PREPARED BY:** Mark de Manincor, Contract Planner

**MEETING DATE:** May 1, 2019

**SUBJECT:** Resolution 2019-08, Notice of Intent to adopt a Mitigated Negative Declaration and Mitigation Monitoring Report and Program (Environmental Assessment), Tentative Tract Map (TTM) 36710 and Variance 19-3001 for a proposal to subdivide four lots totaling 10.6 acres into 39 single-family residential lots and three lettered lots in the Low Density Residential Zoning District, Assessor's Parcel Number's 534-183-014, 534-200-004, 534-200-008 and 534-200-047

---

**RECOMMENDATION:**

That the Planning Commission adopt Resolution 2019-08, recommending to the City Council approval of the following actions, subject to the Findings incorporated therein.

- I. Adoption of a Mitigated Negative Declaration (MND) and Mitigation Monitoring Report and Program for the project (Environmental Assessment).
- II. Tentative Tract Map 36710.
- III. Variance 19-3001

**APPLICANT INFORMATION:**

**Project Applicant:** Beau Cooper, United Engineering Group  
8885 Haven Avenue, Suite 195  
Rancho Cucamonga, CA 91730

**Property Owner:** RMG Residential 2010, LLP  
8800 N. Gainey Center Drive, Suite 255  
Scottsdale, AZ 85258

Project Location: North of East Wilson Street and west of North Florida Street

APN Information: 534-183-014, 534-200-004, 534-200-008 and 534-200-047.

### **APPLICANT'S REQUEST:**

The applicant is requesting consideration of a Mitigated Negative Declaration and Mitigation and Monitoring Report and Program for a project proposing a Tentative Tract Map to subdivide 10.6-acres of land into 39 single-family residential lots in the Low-Density Residential (LDR) Zone and a Variance to allow for a reduced lot size and lot width of lot 7 as the lot is restricted in size by existing development to the east and west. The site is located north of East Wilson Street west of North Florida Street (APN's 534-183-014, 534-200-004, 534-200-008 and 534-200-047).

### **PROJECT BACKGROUND AND SETTING:**

#### **BACKGROUND**

The project was originally submitted, September 2015 as a Planned Unit Development (PUD), Tentative Tract Map (TTM), Environmental Assessment (EA) and Zone Change (ZC). On, September 28, 2017, the Planning Commission recommended approval of the project to the City Council by a 3-2 vote but had concerns about the small lot sizes. At the City Council meeting of September 26, 2017, the City Council continued the project off calendar as they expressed concerns with the small lot sizes, outdoor access to the second story of some proposed single-family structures and inconsistencies with the Site Plans submitted to the Planning Commission and City Council.

The applicant revised and resubmitted the project, September 2018. The revised project includes a Tentative Tract Map, Environmental Assessment and Variance. The PUD, ZC and DR were withdrawn in favor of maintaining the Low Density Residential Zoning, maintaining large lot sizes and bringing the Design Review forward, at a later date, when the owner is ready to develop. This will be consistent with the Planning Commission's and City Council's desire to keep large lot sizes and will allow the owner to determine what type of product to build depending on the market at time of construction. The reason the original project called for a PUD/ZC can be explained in the paragraphs below which are sampled from the Staff Report of the September, 6, 2017 Planning Commission meeting.

*"The project proposes a Planned Unit Development Permit with lot sizes ranging from 5,000 square feet to 12,817 square feet for certain cul-de-sac lots. The majority of the lot sizes are within the 5,000 square foot range. The project proposes a net density of 4.53 dwelling units per acre totaling 46 single-family residential lots. The project will include over 30 percent of Open Space amenities, including a small trail system, park and picnic areas. The open space/park area will also serve as an emergency landing zone as required for projects in Zone D of the*



*Riverside County Airport Land Use Plan for the Banning Municipal Airport. Consequently, the open space park area will not contain any structures higher than four feet.*

*The application for a Planned Unit Development Permit was necessitated by the Airport Land Use Commission (ALUC) compatibility zone where residential projects in Compatibility Zone D must be either, higher density (5,000 square foot minimum lot size) residential lots or very low density residential lots. The rationale behind this is; higher density single-family residential development can create room for open space areas for emergency landing events. Residential developments in Compatibility Zone D must leave, at least, 30 percent of the property available for open space to accommodate aircraft emergency landings. Very low density lots, by design, have open areas for emergency landing events. In accordance with the Banning Municipal Code, Planned Unit Developments must create and utilize open space areas for amenities such as parks, recreation and common areas."*

The applicant has gained approval from ALUC, November 8, 2018, for the project as resubmitted. ALUC finds that the open fields to the south satisfy the requirement to have nearby emergency landing zones for aircraft. The applicant is keeping with the LDR zoning requirements of 7,000 square foot minimum lot sizes but has requested a Variance to allow for a smaller lot that is constrained by existing developed land.

The project will continue with the existing Environmental Review as all of the impacts are the same or reduced with the new submittal. The scope of the project has been amended on the Environmental Assessment to reflect the changes in the project.

## SETTING

The 10.6-acre vacant site is an undeveloped infill parcel primarily covered with dry, tall grasses and scattered low bushes. The site slopes generally downward from the northwest to the southeast. The highest point at the northwest corner is 2,453 feet above mean sea level (amsl) and the lowest point at the southeast corner is 2,422 amsl. The property is adjacent to East Wilson Street and North Florida Street which are both improved streets. The property consists of four lots that will be combined and subdivided with the Tract Map. North, East and West of the site are developed single-family residential lots. To the south are open sports fields and a school. The property is currently zoned Low Density Residential (LDR), which establishes a minimum single-family residential lot size of 7,000 square feet. If the Project site were built out in accordance with its existing General Plan Land Use Designation (LUD), a total of 53 units could be constructed. The applicant is proposing 39 numbered lots and 3 lettered lots.

The table below denotes the related uses and zoning districts within the Project area.

### LAND USE SUMMARY TABLE

Location	General Plan Designation	Zoning Designation
Site	Low Density Residential (LDR)	LDR (0-5 dwelling units per acre)
North	LDR	LDR
South	Public Facility – School (PF-S)	PF-S
East	LDR	LDR
West	LDR	LDR
<i>Source: City of Banning General Plan and Zoning Map</i>		

### **ANALYSIS:**

#### **Tentative Tract Map 36710**

Pursuant to Title 16 of the Banning Municipal Code, regarding Tentative Tract Maps, the Planning Commission is the Advisory Agency to the City Council. Therefore, the attached Resolution 2019-08 is a recommendation of approval to the City Council. Additionally, Findings for the approval of the Tentative Tract Map can be found within the attached resolution.

TTM 36710 proposes 39 numbered lots with a minimum lot size of 7,000 square feet and three lettered lots dedicated for detention basin purposes. Numbered lots range in size from 5,880 (Lot 7) square feet to 13,550 square feet. The total density is 3.84 dwelling units per acre.

Access to the Project site is from East Wilson Street where the project provides three cul-de-sacs to service the majority of the development. Lots 7 and 39 will gain access via East Hoffer Street and lots 35 – 38 will gain access via North Florida Street. The City of Banning defines traffic Level of Service (LOS) "satisfactory" as LOS D. LOS D is the minimum LOS to be maintained on all roadway segments and intersections. Trip generation for the proposed project was calculated using rates from the Institute of Transportation Engineers (ITE) Trip Generation (9<sup>th</sup> Edition). The project will be utilizing the same Traffic Study for the original project and incorporating all recommended mitigation measures and conditions. Based on the project's trip generation for the denser PUD project, under existing and opening year conditions, all the studied intersections operate at satisfactory LOS or better.

Access to the project will be accommodated by using existing streets and/or proposed cul-de-sacs. Water, sewer and electrical service will be provided by the City of Banning Public Works Department and Electrical Division. The Project is required to connect to the existing 8-inch water main on East Wilson Street and existing 8-inch sewer line at the intersection of East Wilson Street and North Florida Street. Lots 7 and 39 will connect to the existing water and sewer lines in Hoffer Street and Lots 35 – 38 will connect to the existing water and sewer lines in North Florida Street.



There is an existing 15-foot wide Southern California Edison easement behind proposed lots 8 through 19. Southern California is requesting the easement be increased to 30 feet to allow vehicle access. This 30-foot wide easement affects the backyards of the above mentioned lots. Lots 8 through 13 will have their backyards reduced by 15 feet. Lots 14 through 19 will have their backyards reduced by 15 feet. Lots 14 through 19 have the greatest impact as their lots will be reduced from 105 feet in depth to 90 feet.

#### Variance

Pursuant to the Banning Municipal Code Section 17.112.010 regarding variances; "Variances from this Zoning Ordinance shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, unusual geological or geographical feature, the strict application of this Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical land use districts." Additionally, "The Planning Commission may grant a Variance from the requirements of this Zoning Ordinance for the following: 1. The modification of the dimensional standards of the distance between structures, lot area, lot coverage, lot dimensions, setbacks, and structure heights."

Variance 19-3001 is a request by the applicant to allow for a smaller lot size and smaller width dimension for lot 7. Lot 7 is constrained by developed residential properties on both sides. The lot as proposed is 56 feet wide, 105 feet deep for a total of 5,880 square feet. The minimum lot sizes in the LDR zone are; 70 feet wide, 90 feet deep and a total of 7,000 square feet. As demonstrated here, the lot width and total square footage are below the minimum. The lot width is consistent with other lots in the area. On the same block there are lot widths ranging from 50 feet to 150 feet. There are existing single-family and multi-family residential structures in the area.

As stated above, the Planning Commission may grant a variance for lot width and lot area if the property is deprived the privilege of other properties in the vicinity and under identical land use districts. Additionally, the Planning Commission may approve and/or modify an application in whole or in part, with or without conditions, only if all findings are made. Findings for this proposed Variance can be found in the attached Resolution for the project.

#### **ENVIRONMENTAL DETERMINATION:**

In accordance with the California Environmental Quality Act (CEQA), an Initial Study was prepared and circulated that demonstrated environmental effects would be reduced to less than significant levels with mitigation measures. Therefore, a Mitigated Negative Declaration and Mitigation Monitoring Program are proposed for the project. The Initial Study and Notice of Intent to adopt a Mitigated Negative Declaration was distributed, August 11, 2017, for a 20-day comment period to organizations and individuals who have previously requested such notice in writing to the City of Banning and to responsible and trustee agencies. The notice of intent was also noticed in the Record

Gazette, which is a primary newspaper of circulation in the area and to individuals who live within 300 feet of the project site. The notice of intent and Initial Study were made available to the public at the Planning Counter at Banning City Hall, 99 East Ramsey Street and the local Library located at 21 West Nicolet Street. The Mitigated Negative Declaration is attached as Attachment 2.

### **PUBLIC COMMUNICATION**

The proposed Mitigated Negative Declaration, Tentative Tract Map 36710 and Variance 19-3001 were advertised in the Record Gazette newspaper on April 19, 2019 (Attachment 4). Additionally, the notice was mailed to all property owners within 300 feet of the Project. As of the date of this report, staff has not received any oral or written comments for or against the proposal.

Prepared by:

Reviewed by:

---

Mark de Manincor  
Contract Planner

---

Adam Rush, AICP  
Community Development Director

### **Attachments:**

1. Resolution 2019-08 with Conditions of Approval
2. Initial Study/Mitigated Negative Declaration, Mitigation Monitoring Report and Program
3. Tentative Tract Map 36710
4. Public Hearing Notice

**ATTACHMENT 1**

Resolution 2019-08 with Conditions of Approval

**RESOLUTION NO. 2019-08**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA, RECOMMENDING TO THE CITY COUNCIL APPROVAL OF TENTATIVE TRACT MAP 36710, VARIANCE 19-3001 AND A MITIGATED NEGATIVE DECLARATION FOR A RESIDENTIAL SUBDIVISION PROJECT ON REAL PROPERTY LOCATED NORTH OF EAST WILSON STREET AND WEST OF NORTH FLORIDA STREET (APNS: 534-183-014, 534-200-004, 534-200-008 AND 534-200-047)**

**WHEREAS**, the applicant, United Engineering Group, has submitted an application for Tentative Tract Map 36710 and Variance 19-3001 for consideration by the Planning Commission and recommendation to the City Council of the proposed project to subdivide four lots totaling 10.6 acres to create 39 single-family residential lots and 3 lettered lots; and

**WHEREAS**, the Title 16 of the Banning Municipal Code and the Subdivision Map Act allows the subdivision of the approximately 10.6 acres within the Low Density Residential Zone into 39 lots with a minimum lot size of 7,000 square feet with the approval of a Tentative Tract Map; and

**WHEREAS**, the Community Development Department has evaluated the project's potential effects on the environment as required under the California Environmental Quality Act ("CEQA") and prepared a Mitigated Negative Declaration (MND) in compliance with CEQA Section 21064.5, which incorporates conditions and mitigation measures that reduce the potential impacts of the project below significance; and

**WHEREAS**, the MND's Notice of Intent regarding Tentative Tract Map 36710, was advertised in the Record Gazette newspaper on August 11, 2017. Additionally, the notice was mailed to all property owners within 300 feet of the project site; and

**WHEREAS**, on September 6, 2017, the Planning Commission held the first duly noticed public hearing for the original project at which time the Planning Commission considered the MND, a Planned Unit Development Permit, Design Review 15-7004 and Tentative Tract Map 36710, and recommended approval to the City Council by a 3 to 2 vote; and

**WHEREAS**, on September 26, 2017, the City Council held the first duly noticed public hearing for the project at which time the City Council tabled the project citing inconsistencies with the plans submitted to the City Council and Planning Commission, lot sizes were small and outdoor access to the second story of some units appear to make the houses multi-family; and

**WHEREAS**, on September 25, 2018, the applicant revised the project by reducing the number of lots from 46 to 39, withdrew the Planned Unit Development and Design Review applications, and submitted a application for a Variance for Lot 7; and

**WHEREAS**, on April 19, 2019, the City gave public notice as required under Government Code Section 66451.3 by advertising in the Record Gazette Newspaper, and mailing notices to all property owners within 300 feet of the project site of the holding of a public hearing for the Planning Commission's review and recommendation, at which time the project would be considered; and

**WHEREAS**, on May 1, 2019, the Planning Commission held a duly noticed public hearing for the revised project where interested persons had an opportunity to testify in support of, or opposition to the project and the Planning Commission considered the project.

**NOW THEREFORE**, the Planning Commission of the City of Banning does hereby resolve, determine, find, and order as follows:

SECTION 1: California Environmental Quality Act Findings and Recommendation for Adoption of Mitigated Negative Declaration and Mitigation Monitoring Report and Program (MMRP). The Planning Commission of the City of Banning does hereby recommend that the City Council of the City of Banning make the following environmental findings and determinations in connection with the approval of the project:

- A. Pursuant to the CEQA (Cal. Pub. Res. Code § 21000 *et seq.*), the State Guidelines (14 Cal. Code Regs. § 15000 *et seq.*), and the City's Local Guidelines, City Staff prepared an Initial Study of the potential environmental effects of the approval of the project as described in the Initial Study. Based upon the findings contained in that Study, City Staff determined that, with the incorporation of mitigation measures, there was no substantial evidence that the project could have a significant effect on the environment and an (MND) was prepared in full compliance with the requirements of CEQA.
- B. Thereafter, City Staff provided public notice of the public comment period and of the intent to adopt the MND as required by law. The public comment period commenced on August 11, 2017, and expired August 31, 2017. Copies of the documents have been available for public review and inspection at City Hall, 99 E. Ramsey Street, Banning, California 92220, and the Banning Public Library, 21 West Nicolet Street, Banning, California 92220. The City did not receive any comments during the public review period.
- C. The Planning Commission reviewed MND and the MMRP, which is on file with the Planning Department and incorporated herein by this reference, and all comments received regarding the MND and, based on the whole record before it, recommends that the City Council find that: (1) the MND was prepared in compliance with CEQA; (2) with the incorporation of mitigation measures, there



is no substantial evidence that the Project will have a significant effect on the environment; and (3) the MND reflects the independent judgement and analysis of the City Council.

- D. Based on the findings set forth in this Resolution, the Planning Commission hereby recommends adoption of the MND and MMRP to the City Council for the project.

SECTION 2. Required Municipal Code and Subdivision Map Act Findings and Recommendation of Approval for Tentative Tract Map 36710. An application for a Tentative Tract Map requires that it meet specific findings in accordance with Title 16 of the Banning Subdivision Municipal Code and Government Code Sections 66473.5 and Section 66474. The Planning Commission of the City of Banning does hereby recommend that the City Council of the City of Banning make the following findings and determinations in connection with the approval of the project:

**A. Finding: The proposed map is consistent with the General Plan.**

**Findings of Fact:**

The General Plan land use designation for the site is classified as Low Density Residential, which allows housing densities from 0 to 5 dwelling units per acre. The proposed Map will result in the development of 39 single family residential dwelling units at a density of 3.84 units per acre. This density level is within the range permitted under the General Plan land use designation for this site. One of the primary policies of the Land Use Element of the General Plan is that projects adjacent to existing neighborhoods shall be carefully reviewed to assure that neighborhood character is protected. The proposed Tentative Tract Map serves to achieve this objective in that the subdivision design is consistent with existing neighborhood housing stock. Considering all of these aspects, the proposed Map furthers the objectives and policies of the General Plan and is compatible with the land use districts within the general vicinity of the Project.

**B. Finding: The design or improvement of the proposed subdivision is consistent with the City's General Plan.**

**Findings of Fact:**

The proposed subdivision has been designed to meet City standards which provide satisfactory pedestrian and vehicular circulation, including emergency vehicle access and on site improvements, such as streets, utilities, and drainage facilities have been designed and are conditioned to be constructed in conformance with City standards which is consistent with the City's General Plan.

**C. Finding: The site is physically suitable for the type of development.**

**Findings of Fact:**

The 10.6 acre site is relatively flat with a change in elevation from 2,453 to 2,422 feet above mean sea level. The proposed project is adjacent to existing residential development and has availability of all services including, streets, water, sewer and electricity. Therefore, the site is physically suitable for this type of development.

**D. Finding: The site is physically suitable for the density of development.****Findings of Fact:**

The site is located within the Low Density Residential Zone which allows for 0-5 dwelling units per acre. The project proposes 3.84 dwelling units per acre which is less than the maximum allowed. The subdivision, as proposed is suitable for the density of development.

**E. Finding: The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.****Findings of Fact:**

The site is currently vacant and does not contain any significant vegetation or habitat for wildlife. Per the Multiple Habitat Conservation Plan (MSHCP), there is no evidence that any endangered, threatened or listed species of plant or animal, or its habitat, is located on the site. There is no evidence that vernal pool complex, similar bodies of water, or conditions suitable for forming such bodies of water exist on the site. The Project incorporates conditions intended to comply with the recommendations of the MSHCP. In addition, this Project has been conditioned to comply with the environmental policies and regulations of the City of Banning and those of all local and regional governmental agencies having jurisdiction over the site.

**F. Finding: The design of the subdivision or type of improvements is not likely to cause serious public health problems.****Findings of Fact:**

The design of the subdivision is in conformance with the City's General Plan, Zoning Ordinance, and Subdivision Ordinance, the construction of all units on the site has been conditioned to comply with all applicable City of Banning ordinances, codes, and standards including, but not limited to, the California Uniform Building Code, the City's Ordinances relating to Stormwater runoff management and controls. In addition, the design and construction of all improvements for the subdivision has been conditioned to be in conformance with adopted City street and public works standards. The City's ordinances, codes, and standards have been created based on currently accepted standards and practices for the preservation of the public health, safety and welfare.

- G. Finding: The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.**

**Findings of Fact:**

Other than easements for Banning Provided Utilities and Southern California Edison, no easements of record or easements established by judgement of a court of competent jurisdiction for public access across the site have been disclosed in a search of the title records for the site and the City does not otherwise have any constructive or actual knowledge of any other such easements.

SECTION 3: Required Municipal Code Findings and Recommendation of Approval for Variance 19-3001. An application for a Variance requires that it meet specific findings in accordance with Title 17 of the Banning Municipal Code. A variance must adequately meet the adopted provisions of the Title 17 Variance chapter based upon the following findings. The Planning Commission of the City of Banning does hereby recommend that the City Council of the City of Banning make the following findings and determinations in connection with the approval of the project:

- A. Finding: That there are special circumstances applicable to the property, including size, shape, topography, geological or geographic conditions, in which the strict application of this Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical land use district classification;**

**Findings of Fact:**

The property's land use designation is Low Density Residential (LDR) which allows for a minimum lot size of 7,000 square feet, a minimum width of 70 feet and a minimum depth of 90 feet. The proposed lot (Lot 7) dimension is 56 feet wide by 105 feet deep. This creates an overall lot size of 5,880 square feet. The lot width is impacted by existing developed property to the east and west of the site which limits the width to 56 feet. Another property on the same block and in the same zoning district has a total width of 50 feet which is less than requested here. Therefore this property is deprived of the same privilege as the existing property with a 50 foot width without approval of a variance.

- B. Finding: That granting the Variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and land use district and denied to the property for which the Variance is sought;**

**Findings of Fact:**

The granting of a Variance is necessary so that Lot 7 can be created to fit within the area proposed. Lot 7 will be comparable with other properties on the same



block and same zoning district as there are properties on the same block and same zoning district that are 50 feet wide.

- C. Finding: That granting the Variance will not be materially detrimental to the public health, safety, or welfare, or injurious to the property or improvements in such vicinity and land use district in which the property is located;**

**Findings of Fact:**

The creation of Lot 7 will not be detrimental to the public health, safety, or welfare, or injurious to properties in the vicinity. Lot 7 will connect to water and sewer on Hoffer Street which is an improved street and will utilize the same services available to other properties in the area.

- D. Finding: That granting the Variance does not constitute a special privilege inconsistent with the limitations upon other properties (not including non-conforming properties) in the vicinity and land use district in which such property is located;**

**Findings of Fact:**

Lot 7 is the last vacant lot on the block. By developing this lot, the street will be builtout. This will not constitute a special privilege as it will complete development on the block and will be similar to other lots in the same area.

**SECTION 4. Planning Commission Action: Recommendation of Approval of Project with Conditions.** Based on the foregoing, the Planning Commission of the City of Banning hereby recommends that the City Council of the City of Banning approve Tentative Tract Map 36710 and Variance 19-3001 to permit the subdivision of four lots into 39 numbered lots and three lettered lots on 10.6-acres of land located south of East Hoffer Street, west of North Florida Street and north of East Wilson Street as shown in the attached plans (Exhibit A) Assessor's Parcel Numbers 534-183-014, 534-200-004, -008, and -047, and subject to the recommended Conditions of Approval attached as Exhibit B.

PASSED, APPROVED AND ADOPTED this 1<sup>st</sup> day of May, 2019.

---

Eric Shaw, Chairman  
Banning Planning Commission

APPROVED AS TO FORM  
AND LEGAL CONTENT

A handwritten signature in black ink, appearing to read 'S. Young', written over a horizontal line.

---

Serita R. Young, Assistant City Attorney  
Richards Watson & Gershon

ATTEST:

---

Sandra Calderon, Recording Secretary  
City of Banning, California

**CERTIFICATION:**

I, Sandra Calderon, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-08, was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 1<sup>st</sup> day of May, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Sandra Calderon, Recording Secretary  
City of Banning, California

**EXHIBIT A**  
**Tentative Tract Map 36710**  
(See Attachment No. 4)

**EXHIBIT B**  
**Conditions of Approval**  
(See Attachment No. 4)

**NOTICE OF PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM, CONSIDERATION OF TENTATIVE TRACT MAP 36710 AND VARIANCE 19-3001. A PROPOSAL TO SUBDIVIDE 10.6-ACRES OF LAND INTO 39 SINGLE-FAMILY RESIDENTIAL LOTS AND THREE LETTERED LOTS AND A VARIANCE TO ALLOW A REDUCED LOT SIZE, LENGTH AND WIDTH FOR LOT 7; WHICH IS LOCATED AT THE NORTHWEST CORNER OF EAST WILSON STREET AND NORTH FLORIDA STREET IN THE CITY OF BANNING, CALIFORNIA (APN's 534-183-014, 534-200-004, -008 AND -047)**

**NOTICE IS HEREBY GIVEN** of a public hearing before the City of Banning Planning Commission, to be held on Wednesday, May 1, 2019, at 6:30 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider the proposed project.

Information regarding the Mitigated Negative Declaration, Mitigation Monitoring and Reporting Program, Tentative Tract Map and Variance can be obtained by contacting the City's Community Development Department, Planning Division at (951) 922-3125, or by visiting the City Hall located at 99 East Ramsey Street, Banning. You may also go to the City of Banning website at <https://banningca.gov>.

All parties interested in speaking either in support of or in opposition to this item are invited to attend the hearing, or to send their written comments to the Community Development Department, Planning Division, City of Banning at 99 E. Ramsey Street, P.O. Box 998, Banning, California, 92220.

If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the Planning Commission makes its recommendation on the proposal; or, you or someone else raised at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009).

**BY ORDER OF THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA**

Adam B. Rush, M.A., AICP  
Community Development Director

Dated: 04/16/2019  
Publish: 04/19/2019

## **ATTACHMENT 2**

Planning Commission Minutes (May 1, 2019)

**City of Banning**  
**PLANNING COMMISSION MINUTES**

**May 1, 2019**

A regular meeting of the City of Banning Planning Commission was held on Wednesday, May 1, 2019 at 6:30 p.m., in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, CA, 92220.

**Commissioners Present:**

Chairman Shaw  
 Commissioner Brosious  
 Commissioner Krick  
 Commissioner Schuler

**Commissioner Absent:**

Commissioner Price

**Staff Present:**

Community Development Director Adam Rush  
 Assistant City Attorney Serita R. Young  
 Contract Planner Mark de Manincor  
 Recording Secretary Sandra Calderon

**I. CALL TO ORDER:**

The meeting was called to order at 6:30 p.m. by Chairman Shaw.

**II. PUBLIC COMMENTS:**

No public comments.

**III. CONSENT CALENDAR ITEMS:**

APPROVAL OF MINUTES: Regular Planning Commission Meeting – April 3, 2019.

**ACTION: Motion/Second (KRICK/SCHULER)**  
**(Motion Carried 4-0)**  
**with Corrections**

Amended minutes will include comments regarding the evacuation plan for the project that was approved at the April 3rd Planning Commission Meeting for the construction of a 96-unit apartment complex which is located in the high fire zone. Cal Fire agreed that this development will be required to have one in place and be listed part of the conditions of approval.



#### IV. PUBLIC HEARING:

##### 1. GENERAL PLAN AMENDMENT 19-2501 INCORPORATING THE LOCAL HAZARD MITIGATION PLAN (LHMP) INTO THE CITY OF BANNING GENERAL PLAN SAFETY ELEMENT. ALL PARCELS IN THE CITY OF BANNING.

Community Development Director, Rush presented the staff report. The item is a City initiated General Plan Amendment to incorporate the local hazard mitigation plan (LHMP) into the City's Safety Element, which covers hazards, hazardous materials, faulting, flooding, emergency services, emergency operations. The Council adopted the current LHMP in 2004 and was updated since then. The plan was approved by FEMA. Assembly Bill (AB) No. 2140 requires the safety element to incorporate the LHMP in order to receive the full level of funding.

Director Rush said the current safety element of the General Plan includes the fire hazard maps and the safety zone as they were in 2006.

Commissioner Schuler said there was a freight train derailment in the City of Devore and an evacuation was done as a result. She asked if this type of hazard going to be included in the safety element.

Director Rush said the current element includes hazardous material spills. In a situation alike, the City would respond first, and then rely on County and State Officials.

Commissioner Brosious said the City should consider training all staff for emergencies so that everyone knows what role they play, or what to do.

Director Rush he will be looking into future emergency staff training.

#### **ACTION: Motion/Second (KRICK/SCHULER)**

Adopt Planning Commission Resolution 2019-11, recommending to the City Council approving General Plan Amendment to the Safety Element of the City of Banning General Plan to incorporate the 2017 Local Hazard Mitigation Plan (LHMP).

**(Motion Carried 4-0)**

**Price Absent**

##### 2. NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING REPORT AND PROGRAM (ENVIRONMENTAL ASSESSMENT), TENTATIVE TRACT MAP (TTM) 36710 AND VARIANCE 19-3001 FOR A PROPOSAL TO SUBDIVIDE FOUR LOTS TOTALING 10.6 ACRES INTO 39 SINGLE-FAMILY RESIDENTIAL LOTS AND THREE LETTERED LOTS IN THE LOW DENSITY RESIDENTIAL ZONING DISTRICT, ASSESSOR'S PARCEL NUMBER'S 534-183-014, 534-200-004, 534-200-008 AND 534-200-047

Contract Planner Mark de Manincor presented the staff report. The item is to consider a mitigated negative declaration and mitigation monitoring program for a proposed tentative tract map to subdivide 10.6 acres into 39 single-family residential lots in the low density residential zone and a variance to allow for a reduced lot size and lot width of lot 7 as the lot is restricted in size by existing development to the east and west. The project was originally submitted in September 2015 as a Planned Unit Development (PUD) a Design Review (DR) and a Tentative Tract Map (TTM). It was approved by the Planning Commission and went City Council where it was tabled. The applicant redesigned the project and resubmitted the TTM. This new submittal is a land division and a variance only. The lots meet the Low Density Residential district standards of 7,000-foot minimum.

Suggested modifications to the Conditions of approval #6, #37, #38 and a new condition the applicant shall cause a recyclables plot plan to be submitted and approved by the Public Work's Department.

Commissioner Schuler asked if the surrounding streets have the purple pipe installed.

Director Rush said he could not see any current piping in the Nobel system under reclaimed water, but could bring that question to the City's Engineer.

Beau Cooper, Entitlement Project Manager with United Engineering Group, said the conditions of approval were reviewed and have no objections to them. He said that if there were a plan for recyclable water in this area they would agree with putting their infrastructure for future connection.

He said once a landscape maintenance district (LMD) is formed, the letter lots A, B, & C will be dedicated to the City of Banning for maintenance of those districts.

A separate meter will be issued for the landscaping district.

The easements for the electric poles will be the property owner's responsibility to maintain. In working with Edison, they agreed to a 30-foot wide easement for that power line is sufficient.

Mr. Cooper feels that the easement would work better to have the easement off set to one side only, but Edison will not condition or move that easement until grading, street plans are submitted for review.

Commissioner Krick said he sees a maintenance nightmare and asked if the maintenance of the easements could be included as part of the maintenance district.

Mr. Cooper said they would be open for that option, but landscape and lighting maintenance districts are usually preserved for public rights-of-way and City owned property.

Chairman Shaw opened public comments.

Frank Burgess, resident of Banning, recommended that the easement should be part of the landscaping program and asked for clarification regarding a retention center for this project.

Chairman Shaw said it is based on hydraulic analysis. He said projects in the City of Beaumont have underground storage underneath their landscape areas.

Commissioner Krick asked if the 30-foot easement could go to the easterly lots, allowing those lots to have 15 feet more in property to the rear of their property and taking 15-feet away from the westerly lots.

Director Rush said he would recommend that Lots 8-13 and Lots 14-19 be modified to accommodate to a maximum 30-foot easement to the easterly lots. An amendment to the final map could be done to revise tentative map before the final conditions of approval are issued before the design review comes forward.

Mr. Cooper said he would like to coordinate with Edison first and bring it back at the Design Review stage.

**ACTION: Motion/Second (KRICK/BROSIOUS)**

1. That the Planning Commission adopt Resolution 2019-08, recommending to the City Council approval of the following actions:
2. Adoption of a Mitigated Negative Declaration (MND) and Mitigation Monitoring Report and Program for the project (Environmental Assessment)
3. Approval of Tentative Tract Map 36710 for the subdivision of 10.6 acres into 39 single-family residential lots within the Low Density Residential District.
4. Approval of Variance 19-3001, subject to the findings referenced herein.

With the following amendments:

6. A six-foot tall decorative block wall shall be constructed around the perimeter of the subdivision, between houses and along all street facing side yards. View fencing, such as wrought iron, shall be constructed along detention basin areas. The applicant shall apply an anti-graffiti coating to all perimeter block walls [added at the Planning Commission meeting of 5/1/19].

37. The City and Developer are to enter into a Subdivision Agreement to guarantee the construction of the public improvements as listed in the Conditions of Approval and as shown on the approved plans. The applicant shall work with the City Attorney's Office to execute the Subdivision Agreement and pay all related legal processing fees. The applicant shall initiate the formation of a Lighting, Landscaping, and Maintenance District (LL&MD) to provide maintenance for the perimeter Right-of-Way landscaping and the water quality basins identified as Lots "A", "B", & "C" [added at the Planning Commission meeting of 5/1/19].

38. All street improvement designs shall provide pavement and lane transitions per City of Banning and Caltrans standards for transition to existing street sections. Street improvements shall include signing and striping for a four way stop at the intersection of Wilson and Florida [added at the Planning Commission meeting of 5/1/19].

97. The applicant shall cause a recyclables Plot Plan to be submitted and approved by the Department of Public Works [added at the Planning Commission meeting of 5/1/19].

**(Motion Carried 4-0)  
Price Absent**

**3. CONDITIONAL USE PERMIT 19-8001 TO ALLOW FOR THE OPERATION OF A RETAIL AUTO PARTS STORE LOCATED ON THE NORTHWEST CORNER OF NORTH 3<sup>RD</sup> STREET AND WEST RAMSEY STREET AT 321 WEST RAMSEY STREET IN THE DOWNTOWN COMMERCIAL (DC) ZONING DISTRICT.**

Contract Planner Mark de Manincor presented the staff report, he said the proposed project is for a Conditional Use Permit (CUP) a request to operate at 6,720 square foot retail facility to sell auto parts and related products. The proposed project is located in an existing building. A recent zoning text amendment approved by City Council Ordinance 1530 made the retail sales of auto parts a conditional permitted use within the Downtown Commercial Zoning District. Modifications to condition number 8 were presented to the Commission.

Director Rush said he spoke to the applicant agrees with the added conditions.

Tom Ogaz, General Manager for Parts Authority said the new effort to expand the existing business within the City of Banning would be an improvement and a better street image.

Commissioner Krick asked about condition number 5 that calls for a video surveillance camera system to be installed with a 90-day storage capacity. He asked if there are some existing cameras on the building.

Mr. Ogaz said the existing cameras were installed from the original owner, but will be installing their own system. They will be installed in all access points as well as sensitive areas.

Chairman Shaw opened public comments

Todd Chiriano, Owner/Real Estate Agent of American Federal Properties in Diamond Bar said he opposes the granting of the CUP and had also spoke against the Zone Text Amendment presented at the City Council meeting on September 10, 2018. He represents his client who purchased the building across the street from the proposed project. He said the owner purchased that building as an investment. City ordinance did not allow additional auto parts in the Downtown zone at that time. The City processed a Zone Text Amendment to allow for an auto parts store within the Downtown zone. The current tenant will now be moving across the street and leaving the owner in a very difficult position financially.

Frank Burgess, resident of Banning, said he supports the Auto Parts business move across the street and asked the Commission to approve the project.

David Ellis resident of Banning said the City has many vacant properties and should not prevent them from wanting to grow within the City.

Mr. Ed Omari owner of 263 W. Ramsey Street said he is amazed the current tenants are moving across the street. After checking with the City in 2017 and assured that another auto parts store would not be allowed to be established in the Downtown (DC) zone.

He said that if the zoning could be changed easily the investment to purchase the building would have not occurred.

Chairman Shaw closed public comments

**ACTION: Motion (KRICK/SCHULER)**

1. That the Planning Commission adopt Resolution 2019-09, and
2. Adopt a Notice of Exemption and finding that the project is Categorical Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) and,
3. Approval of Conditional Use Permit 19-8001 to allow the operation of an Auto Parts Store in the Downtown Commercial (DC) Zoning District.

With the following amendments:

8. The following requirements will be required at the time of plan check submittal and/or prior to building occupancy, whichever occurs first:

(a) The Site shall be developed in compliance with all current model codes. All plans shall be designed in compliance with the latest editions of the California Building Codes as adopted by the City of Banning.

(b) Commercial buildings on the site shall be accessible per California Building Code

(c) Site Facilities such as parking (open and covered), recreation facilities, and trash dumpsters, shall be accessible per California Building Code (CBC) 11A, 11B and 31B.

(d) Separate submittals and permits are required for all accessory structures such as but not limited to, trash enclosures, patios, block walls and storage buildings.

(e) Pursuant to California Business and Professions Code Section 6737, this project is required to be designed by a California licensed architect or engineer. Based on change of use and potential exiting and fire life safety improvements.

(f) The applicant shall apply an anti-graffiti coating to all perimeter block walls. [added at the Planning Commission meeting of May 1, 2019].



(g) The applicant shall cause final landscaping plans ("working drawings") that comply with the City Municipal Code relative to the City's Water Efficiency and Landscape Requirements (e.g. Article III - Landscape Design Guidelines). [added at the Planning Commission meeting of May 1, 2019]

(h) The applicant shall cause a recyclables Plot Plan to be submitted and approved by the Department of Public Works. [added at the Planning Commission meeting of May 1, 2019]

(i) Signs facing the parking area shall be placed on the exterior of the building stating, "No repairs or maintenance shall be performed in the parking area." [added at the Planning Commission meeting of May 1, 2019]

**(Motion Carried 4-0)  
Price Absent**

**4. DESIGN REVIEW 19-7001 TO ALLOW FOR THE CONSTRUCTION OF A RETAIL AUTO PARTS STORE LOCATED ON THE NORTH SIDE OF RAMSEY STREET AND EAST OF MORONGO AVENUE AT 2929 WEST RAMSEY STREET IN THE HIGHWAY SERVING COMMERCIAL (HSC) ZONING DISTRICT.**

Director Rush presented the staff report. A new facility is located within the Highway Serving Commercial (HSC) zone. A Phase One Environmental Assessment (ESA) was prepared; the property was formally agricultural property. Studies came back without any issues on that site. The architectural landscaping and design guidelines requirements were reviewed as set forth-commercial zoning district. A new condition to the Public Works Department was added and the applicant has agreed to it.

Commissioner Krick asked if there would be signage in the parking lot that prohibits mechanical work, on personal automobiles, allowed on the property.

Director Rush said he believes that is a State requirement.

Justin Petersburg, AIA, NCARB said the new condition and condition for signage regarding no work done in the parking lot is acceptable. Hopes to submit for permits within the next few weeks after approval and break ground a few months after. It will be in addition to the current store in the City of Beaumont. With the addition of this store, it will create about twelve to fifteen jobs.

Chairman Shaw opened public comments

Frank Burgess, resident of Banning, said he supports the proposed project and asked the Commissioners to approve and pass it.

Arthur Azusa, owner of 321W. Ramsey Street building said the City did well in passing the Ordinance that would allow this additional Auto Parts Store to come into Banning.

Robert Ybarra, Resident of Banning said he is in favor of the proposed project that will bring new jobs to the City. He encouraged the Commission to approve the project.

Chairman Shaw closed public comments

**ACTION: Motion (KRICK/SCHULER)**

1. That the Planning Commission adopt Resolution 2019-10, and
2. Adopt a Notice of Exemption and findings that the project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15332 (In-Fill Development Projects) and,
3. Approval of Design Review 19-7001 to allow the construction of a retail store for auto parts sales in the Highway Serving Commercial (HSC)

With the following amendments:

102. The applicant shall cause a recyclables Plot Plan to be submitted and approved by the Department of Public Works. [added at the Planning Commission meeting of May 1, 2019]

103. Signs facing the parking area shall be placed on the exterior of the building stating, "No repairs or maintenance shall be performed in the parking area." [added at the Planning Commission meeting of May 1, 2019]

**(Motion Carried 4-0)  
Price Absent**

5. **ZONING TEXT AMENDMENT 19-97502 AMENDING CHAPTER 17.12 "COMMERCIAL AND INDUSTRIAL DISTRICTS" AND 17.36 "SIGN REGULATIONS" OF TITLE 17 "ZONING" OF THE BANNING MUNICIPAL CODE TO AUTHORIZE DIGITAL ADVERTISING DISPLAYS IN THE DOWNTOWN COMMERCIAL DISTRICT, SUBJECT TO A CONDITIONAL USE PERMIT**

Director Rush presented the staff report. The Zone Text Amendment (ZTA) is to allow electronic message centers within the Downtown Commercial (DC) zone. If passed by the Planning Commission, and adopted by the City Council, subject to a Conditional Use Permit (CUP) and a Development Agreement (DA) or Lease Agreement (LA) because of City some owned property within the Downtown Commercial Zoning District. The sign limitation height is 30-feet and maximum square footage of the sign at 200-square feet. During the April 9th Planning Commission meeting, there was discussion of potential operators and locations of the proposed signed within the district. Potential electronic signs cannot be 1000 feet of another electronic sign.

There has been some talk at the staff level of potentially putting a sign on a City owned property, which is across the street from City Hall. The entire frontage of the downtown district is within the landscape area of the freeway.

Commissioner Krick asked why we need this.

Director Rush said this was on the list of projects that needed to be processed from the direction of the City Manager.

Commissioner Krick asked if a business owner in town proposed this as good idea for the City.

Director Rush said he spoke with members of the Chamber and discussion was made as a potential economic driver for the City because we have significant freeway frontage and a sense of pass through traffic going to or from the desert area.

Commissioner Krick said there are currently at least twelve signs on both of the freeway that can accommodate the needs of the businesses in town.

Chairman Shaw opened public comments

Frank Burgess said he would recommend this item be discussed with the Downtown Ad Hoc Committee and table the item.

David Ellis resident of Banning asked if anybody checked if Commissioner Kirk owns property within the Downtown zone area that is being discussed tonight. He agrees that billboards are sometimes unsightly we are in desperate need of getting businesses into town.

Director Rush said Senate Bill No. 169 was approved by the Governor on August 2013 and amended 263.3 of the Streets and Highways Code.

**ACTION: Motion (KRICK/BROSIOUS)**

Request staff to prepare a resolution making a recommendation that the City Council deny the proposed Zoning Text Amendment.

**(Motion Carried 4-0)  
Price Absent**

**PLANNING COMMISSIONER COMMENTS:**

No Comments

**VI. COMMUNITY DEVELOPMENT DIRECTOR'S COMMENTS:**

Director Rush said he would be attending the SCAG conference through the end of this week.

Some of the upcoming items will be Zoning Text Amendments regarding shipping containers. The City Manager is putting together a homeless conference. There are some interesting things other Cities are doing with shipping containers, such as temporary housing and commercial use.

Another item coming possibly in June or July is the street vendor ordinance that will go directly to City Council.



A community meeting will be held May 13th with the Sun Lakes Community to discuss the Sun Lakes Boulevard extension. An RFP for the Sun Lakes Boulevard extension realignment will go out to the environmental consultants this week.

**VII. ADJOURNMENT:**

There being no further business, the meeting adjourned at 8:51 p.m. to the next Regular Planning Commission of June 5<sup>th</sup> at 6:30 p.m. at the City of Banning Council Chambers.

Respectfully submitted,

---

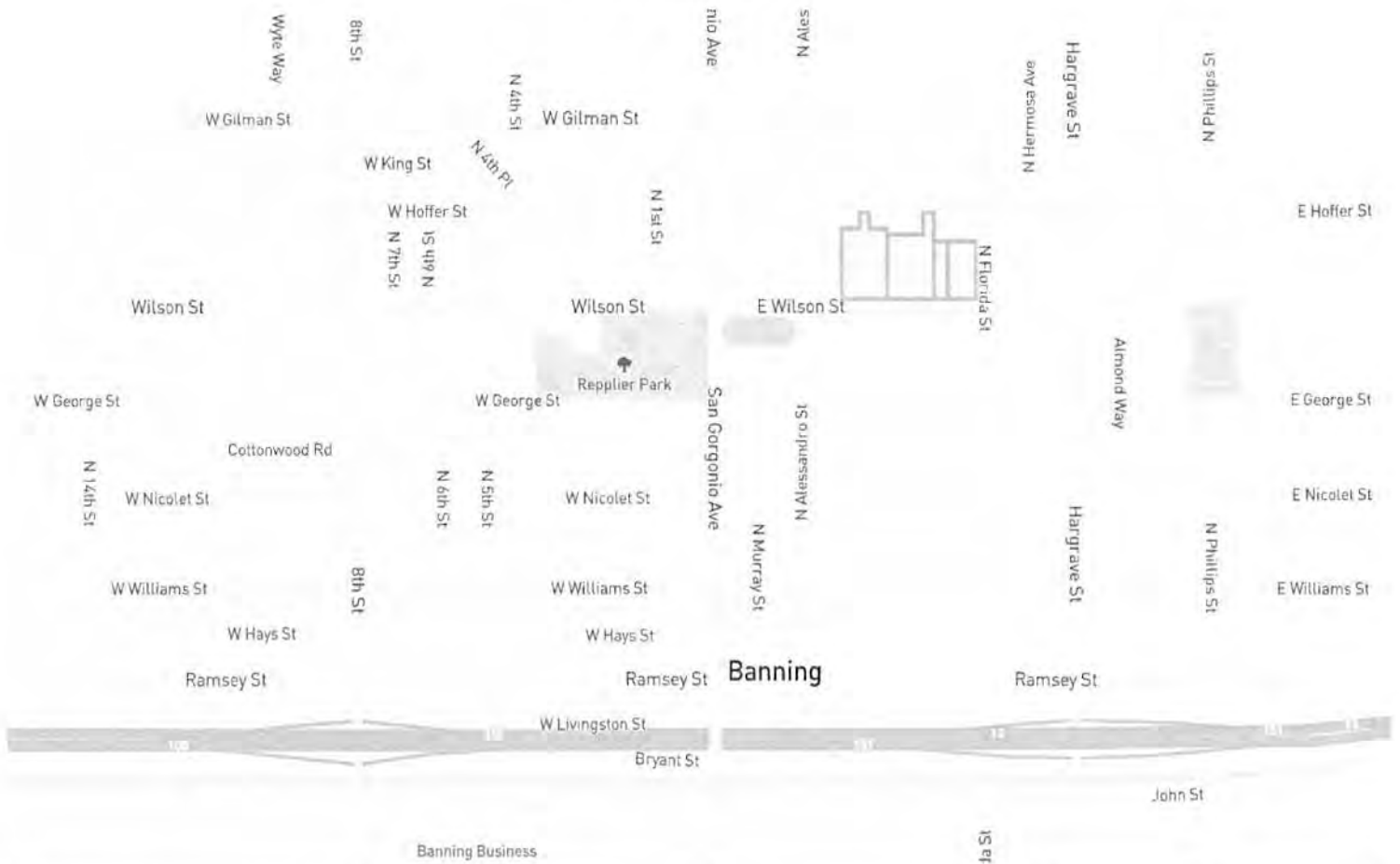
Sandra Calderon  
Recording Secretary

**THE ACTION MINUTES SUMMARIZE ACTIONS TAKEN BY THE PLANNING COMMISSION. A COPY OF THE MEETING IN ITS ENTIRETY IS AVAILABLE IN DVD FORMAT AND CAN BE REQUESTED IN WRITING FROM THE CITY CLERK'S OFFICE.**

# ATTACHMENT 3

Land Use Exhibits

Default Title



1" = 1191 ft	Sub Title	04/23/2019	
This map may represents a visual display of related geographic information. Data provided here on is not guarantee of acutual field conditions. To be sure of complete accuracy, please contact the responsible staff for most up-to-date information.			

This map may represent a visual display of related geographic information. Data provided here on is not guarantee of actual field conditions. To be sure of complete accuracy, please contact the responsible staff for most up-to-date information.

# TTM 36710 Zoning Map



1" = 177 ft	Low Density Residential (LDR)	04/23/2019	
This map may represents a visual display of related geographic information. Data provided here on is not guarantee of acutual field conditions. To be sure of complete accuracy, please contact the responsible staff for most up-to-date information.			

**ATTACHMENT 4**  
City Council Resolution 2019-\_\_\_\_

## RESOLUTION NO. 2019-\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ADOPTING A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING REPORT AND PROGRAM FOR A RESIDENTIAL SUBDIVISION PROJECT, APPROVING TENTATIVE TRACT MAP 36710 TO SUBDIVIDE 4 LOTS TOTALING 10.6-ACRES OF LAND INTO 39 SINGLE-FAMILY RESIDENTIAL LOTS IN THE LOW DENSITY RESIDENTIAL ZONING DISTRICT AND VARIANCE 19-3001 TO ALLOW A REDUCED LOT SIZE AND WIDTH FOR LOT 7 ON REAL PROPERTY LOCATED NORTH OF EAST WILSON STREET AND WEST OF NORTH FLORIDA STREET (APN: 534-283-014, 534-200-004, 534-200-008 AND 534-200-047)

**WHEREAS**, an application for Tentative Tract Map 36710 and Variance 19-3001 has been duly filed by:

Applicant:	United Engineering Group
Owner:	RMG Residential 2010, LLP
Project Location:	North of East Wilson Street, west of North Florida Street
APN Number's:	534-183-014, 534-200-004, 534-200-008 and 534-200-047
Lot Area	10.6 acres

**WHEREAS**, the Title 16 of the Banning Municipal Code and the Subdivision Map Act allows the subdivision of 10.6-acres within the Low Density Residential Zone into 39 lots with a minimum lot size of 7,000 square feet with the approval of a Tentative Tract Map; and

**WHEREAS**, on May 1, 2019 the Planning Commission held a duly noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Tentative Tract Map and Variance and at which time the Planning Commission considered the Project and recommended approval to the City Council; and

**WHEREAS**, in accordance with Government Code § 65854, the City Council public hearing was advertised in the Record Gazette newspaper on May 31, 2019 the City gave public notice as required under Government Code Section 66451.3 by advertising in the Record Gazette Newspaper, and mailing notices to all property owners within 300-feet of the project site of the holding of a public hearing for the City Council's review, at which time the project would be considered; and

**WHEREAS**, on June 11, 2019, the City Council held a duly noticed public hearing at which time interested persons had an opportunity to testify in support of, or



opposition to, the project and at which time the City Council considered Tentative Tract Map 36710 and Variance 19-3001.

**NOW THEREFORE**, the City Council of the City of Banning does hereby resolve, determine, find, and order as follows:

### **SECTION 1: ENVIRONMENTAL FINDINGS.**

The City Council, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines and Thresholds of Significance, the staff recommendation as provided in the Staff Report dated June 11, 2019, and documents incorporated therein by reference, and any other evidence [within the meaning of Public Resources Code § 21080(e) and § 21082.2] within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

#### **A. Public Record:**

The documents and other materials constituting the record of the proceedings upon which the City's decision and its findings are based is located at the City of Banning Community Development Department, Planning Division. The Final Mitigated Negative Declaration meets the requirements of this finding in that documents and other material constituting the record of the proceedings upon which the City's decision and findings are located at the Planning Division of the City of Banning, 99 East Ramsey Street, CA, 92220 in the custody of the Banning Community Development Department as part of the public record.

#### **B. CEQA:**

The approval of this Tentative Tract Map (Exhibit A) is in compliance with requirements of the California Environmental Quality Act ("CEQA"), in that on June 11, 2019, at a duly noticed public hearing, the City Council considered the project's Final Mitigated Negative Declaration (Exhibit B) and Mitigation Monitoring Report and Program (Exhibit C) and found that no significant environmental impacts would occur after required Mitigation Measures.

#### **C. The Community Development Director is authorized to file a Notice of Determination in accordance with CEQA.**

### **SECTION 2: TENTATIVE TRACT MAP 36710 FINDINGS**

An application for a Tentative Tract Map is required to meet specific findings in accordance with Title 16 of the Banning Municipal Code, on Subdivisions, and Government Code Sections 66473.1, 66473.5 and Section 66474. A tentative map must adequately meet the adopted provisions of the Title 16 based upon the following findings:

The City Council hereby finds:

- A. The proposed map is consistent with the General Plan.

The General Plan land use designation for the site is classified as Low Density Residential which allows housing densities from 0 to 5 dwelling units per acre. The proposed Map will result in the development of 39 single family residential dwelling units at a density of 3.84 units per acre. This density level is within the range permitted under the General Plan land use designation for this site. One of the primary policies of the Land Use Element of the General Plan is that projects adjacent to existing neighborhoods shall be carefully reviewed to assure that neighborhood character is protected. The proposed Tentative Tract Map serves to achieve this objective in that the subdivision design is consistent with existing neighborhood housing stock. Considering all of these aspects, the proposed Map furthers the objectives and policies of the General Plan and is compatible with the land use districts within the general vicinity of the Project.

- B. The design or improvement of the proposed subdivision is consistent with the City's General Plan.

The proposed subdivision has been designed to meet City standards which provide satisfactory pedestrian and vehicular circulation, including emergency vehicle access and on site improvements, such as streets, utilities, and drainage facilities have been designed and are conditioned to be constructed in conformance with City standards which is consistent with the City's General Plan.

- C. The site is physically suitable for the type of development.

The 10.6-acre site is relatively flat with a change in elevation from 2,453 to 2,422 feet above mean sea level. The proposed project is adjacent to existing residential development and has availability of all services including, streets, water, sewer and electricity. Therefore, the site is physically suitable for this type of development.

- D. The site is physically suitable for the density of development.

The site is located within the Low Density Residential Zone which allows for 0-5 dwelling units per acre. The project proposes 3.84 dwelling units per acre which is less than the maximum allowed. The subdivision, as proposed is suitable for the density of development.

- E. The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

The site is currently vacant and does not contain any significant vegetation or habitat for wildlife. Per the Multiple Habitat Conservation Plan (MSHCP), there is no evidence that any endangered, threatened or listed species of plant or animal, or its habitat, is located on the site. There is no evidence that vernal pool complex, similar bodies of water, or conditions suitable for forming such bodies of water exist on the site. The Project incorporates conditions (Exhibit D) intended to comply with the recommendations of the MSHCP. In addition, this Project has been conditioned to comply with the environmental policies and regulations of the City of Banning and those of all local and regional governmental agencies having jurisdiction over the site.

- F. The design of the subdivision or type of improvements is not likely to cause serious public health problems.

The design of the subdivision is in conformance with the City's General Plan, Zoning Ordinance, and Subdivision Ordinance, the construction of all units on the site has been conditioned to comply with all applicable City of Banning ordinances, codes, and standards including, but not limited to, the California Uniform Building Code, the City's Ordinances relating to stormwater runoff management and controls. In addition, the design and construction of all improvements for the subdivision has been conditioned to be in conformance with adopted City street and public works standards. The City's ordinances, codes, and standards have been created based on currently accepted standards and practices for the preservation of the public health, safety and welfare.

- G. The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

Other than easements for the Banning Electric Utility and Southern California Edison (SCE), no easements of record or easements established by judgement of a court of competent jurisdiction for public access across the site have been disclosed in a search of the title records for the site and the City does not otherwise have any constructive or actual knowledge of any other such easements.

### **SECTION 3: VARIANCE 19-3001**

An application for a Variance requires that it meet specific findings in accordance with Title 17 of the Banning Municipal Code. A variance must adequately meet the adopted provisions of Title 17 based upon the following findings.

The City Council hereby finds:

- A. That there are special circumstances applicable to the property, including size, shape, topography, geological or geographic conditions, in which the strict application of the Banning Municipal Code (BMC) – Title 17, which deprives such property of privileges enjoyed by other property in the vicinity and under a similar land use district classification;

The property's land use designation is Low Density Residential (LDR) which allows for a minimum lot size of 7,000-square feet, a minimum width of 70-feet and a minimum depth of 90-feet. The proposed lot (Lot 7) dimension is 56-feet wide by 105-feet deep. This creates an overall lot size of 5,880-square feet. The lot width is impacted by existing developed property to the east and west of the site which limits the width to 56-feet. Another property on the same block and in the same zoning district has a total width of 50-feet which is less than requested here. Therefore, this property is deprived of the same privilege as the existing property with a 50-foot width without approval of a variance.

- B. That granting the Variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and land use district and denied to the property for which the Variance is sought;

The granting of a Variance is necessary so that Lot 7 can be created to fit within the area proposed. Lot 7 will be comparable with other properties on the same block and same zoning district as there are properties on the same block and same zoning district that are 50-feet wide.

- C. That granting the Variance will not be materially detrimental to the public health, safety, or welfare, or injurious to the property or improvements in such vicinity and land use district in which the property is located;

The creation of Lot 7 will not be detrimental to the public health, safety, or welfare, or injurious to properties in the vicinity. Lot 7 will connect to water and sewer on Hoffer Street which is an improved street and will utilize the same services available to other properties in the area.

- D. That granting the Variance does not constitute a special privilege inconsistent with the limitations upon other properties (not including non-conforming properties) in the vicinity and land use district in which such property is located;

Lot 7 is the last vacant lot on its residential block. By developing this lot, the street will be completed to the ultimate Right-of-Way (R/W). This will not constitute a special privilege as it will complete development on the immediate vicinity and will be similar to other lots in the same area.



**SECTION 4: CITY COUNCIL ACTION**

The City Council hereby takes the following action:

Adopt the Mitigated Negative Declaration (MND) and associated Mitigation Monitoring Report and Program (MMRP); approve Tentative Tract Map 36710 for the subdivision of four lots into 39 single-family residential lots and three lettered lots and approve Variance 19-3001 to allow for a reduced lot size and width for Lot 7

**SECTION 5. CITY CLERK CERTIFICATION**

The City Clerk shall certify to the adoption of this Resolution and shall cause a certified resolution to be filed in the book of original resolutions.

**PASSED, APPROVED AND ADOPTED this 11<sup>th</sup> day of June, 2019.**

---

Arthur L. Welch, Mayor  
City of Banning

**ATTEST:**

---

Daryl A. Betancur, Deputy City Clerk  
City of Banning

**APPROVED AS TO FORM AND LEGAL CONTENT:**

---

Kevin Ennis City Attorney  
Richards, Watson & Gershon

**CERTIFICATION:**

I, Daryl A. Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2019-\_\_\_ was adopted at a regular meeting of the City Council of the City of Banning held on the 11<sup>th</sup> day of June, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Daryl A. Betancur, Deputy City Clerk  
City of Banning, California

## Exhibit A

Tentative Tract Map 36710





## Exhibit B

Mitigated Negative Declaration

# Initial Study Checklist/ Mitigated Negative Declaration

## City of Banning:

### EXHIBIT B

*Tentative Tract Map 36710*

*for*

*Property located at the northwest corner of east Wilson Street and north Florida Street*



City Banning

99 East Ramsey Street

Banning, CA 92220

Contact: Patty Nevins, Community Development Director

(951) 922-3152

[pnevins@ci.banning.ca.us](mailto:pnevins@ci.banning.ca.us)

## Applicant:

Randall Andrus

RMG RESIDENTIAL 2010, LLLP

8800 North Gainey Center Drive, Suite 255

Scottsdale, Arizona 85258

Contact: Randall Andrus

(480) 609-1200 Ext. 13

[randall@ronmcrae.com](mailto:randall@ronmcrae.com)

**Public Review**

**August 11, 2017**

## TABLE OF CONTENTS

<b>1.0 INTRODUCTION.....</b>	<b>4</b>
1.1 Purpose of the Initial Study Checklist.....	4
1.2 Purpose of a Mitigated Negative Declaration .....	4
1.3 Initial Study Checklist/Mitigated Negative Declaration Document.....	4
1.4 Public Review and Processing of the Document .....	4
1.5 Initial Study Checklist/Mitigated Negative Declaration Findings and Conclusions.....	5
 <b>2.0 PROJECT BACKGROUND .....</b>	 <b>7</b>
2.1 Project Location.....	7
2.2 Existing Site Conditions/Environmental Setting .....	7
2.3 Existing General Plan/Zoning Designations .....	10
2.4 Project Description.....	11
 <b>3.0 INITIAL STUDY CHECKLIST .....</b>	 <b>17</b>
3.1 AESTHETICS.....	22
3.2 AGRICULTURE AND FORESTRY RESOURCES .....	26
3.3 AIR QUALITY.....	32
3.4 BIOLOGICAL RESOURCES.....	44
3.5 CULTURAL RESOURCES.....	51
3.6 GEOLOGY AND SOILS .....	55
3.7 GREENHOUSE GAS EMISSIONS.....	62
3.8 HAZARDS AND HAZARDOUS MATERIALS .....	66
3.9 HYDROLOGY AND WATER QUALITY.....	75
3.10 LAND USE AND PLANNING .....	84
3.11 MINERAL RESOURCES .....	87
3.12 NOISE.....	89
3.13 POPULATION AND HOUSING .....	97
3.14 PUBLIC SERVICES.....	99
3.15 RECREATION.....	103
3.16 TRANSPORTATION/TRAFFIC.....	105
3.17 TRIBAL CULTURAL RESOURCES .....	110
3.18 UTILITIES AND SERVICE SYSTEMS .....	113
3.19 MANDATORY FINDINGS OF SIGNIFICANCE.....	119
 <b>4.0 REFERENCES .....</b>	 <b>123</b>
<b>5.0 REPORT PREPARATION PERSONNEL .....</b>	<b>124</b>

Beau Cooper (TTM 36710)  
Initial Study Checklist/Mitigated Negative Declaration  
August 2017

### LIST OF EXHIBITS

Exhibit 1: Project Location Map/Aerial Photo.....	15
Exhibit 2: Illustrative Lot Layout .....	16

### LIST OF TABLES

Table 1: Site History .....	8
Table 2: Existing Land Use.....	9
Table 3: Existing General Plan and Zoning Designations.....	10
Table 4: Lot Area Characteristics .....	11
Table 5: Attainment Status of Criteria Pollutants in the South Coast Air Quality Management District.....	34
Table 6: South Coast Air Quality Management District Air Quality Regional Significance Thresholds.....	36
Table 7: SCAQMD Emissions Thresholds.....	37
Table 8: Short Term Regional Construction Emissions.....	38
Table 9: Construction Localized Impacts Analysis .....	38
Table 10: opening Year Regional Operational Emissions.....	39
Table 11: Long Term Operational Localized Impact Analysis.....	40
Table 12: Construction Greenhouse Gas Emissions.....	63
Table 13: Project Greenhouse Gas Emissions During Operation.....	64
Table 14: Significance of Greenhouse Gases.....	64
Table 15: Project Density Characteristics.....	72
Table 16: Typical Construction Equipment Noise Levels.....	90
Table 17: Trip Generation Rates.....	106

### LIST OF FIGURES

Figure 1: Aerial of Site Location.....	8
Figure 2: Open Space and Basin Areas.....	12
Figure 3: Earth Quake Fault Map.....	56
Figure 4: Airport Land Use Plan Use Chart. . . . .	71
Figure 5: Banning Airport Compatibility Zone Map.. . . .	72
Figure 6: Airport Noise Contour Map.....	98

**APPLICATION# TTM 36710**

**A. Tentative Tract Map (TTM 36710)**

TTM 36710 proposes to subdivide a 10.6-acre vacant property for purposes of creating forty-six (39) single-family residential lots on property zoned Low Density Residential.

## **1.0. INTRODUCTION**

### **1.1 Purpose of an Initial Study Checklist**

The California Environmental Quality Act (CEQA) requires that before a public agency makes a decision to approve a project that could have one or more adverse effects on the physical environment, the agency must inform itself about the project's potential environmental impacts, give the public an opportunity to comment on the environmental issues, and take feasible measures to avoid or reduce potential harm to the physical environment.

The purpose of an Initial Study Checklist is to provide a preliminary analysis of a proposed action to determine whether a Negative Declaration, Mitigated Negative Declaration, or an Environmental Impact Report should be prepared for a project. An Initial Study Checklist also enables an applicant or the City of Banning to modify a project, mitigating adverse impacts in lieu of preparing an Environmental Impact Report, thereby potentially enabling the project to qualify for a Negative Declaration or a Mitigated Negative Declaration.

The Initial Study Checklist provides a factual basis for a Negative Declaration, Mitigated Negative Declaration, or serves to focus an Environmental Impact Report on the significant effects of a project.

### **1.2 Purpose of a Negative Declaration**

A Negative Declaration is a written statement by the City of Banning that the Initial Study Checklist identified potentially significant environmental effects of the project but the project is revised and conditions of approval incorporated that eliminate impacts to less than significant levels.

### **1.3 Initial Study Checklist/ Negative Declaration Document**

This document in its entirety is an Initial Study Checklist/Negative Declaration prepared in accordance with the California Environmental Quality Act (CEQA), including all criteria, standards, and procedures of CEQA (California Public Resource Code Section 21000 et seq.) and the CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, Section 15000 et seq.).

### **1.4 Public Review and Processing of the Initial Study Checklist/ Negative Declaration**

In the case of the proposed Project, the Initial Study Checklist determined that a Mitigated Negative Declaration is the appropriate form of CEQA compliance document, which does not require a Notice of Preparation. The Initial Study Checklist commenced the twenty (20) day circulation on, August 11, 2017.

This Initial Study Checklist/ Negative Declaration and a *Notice of Intent* to adopt the Negative Declaration was distributed to the following entities for a 20-day public review period:

- 1) Organizations and individuals who have previously requested such notice in writing to the City of Banning;
- 2) Responsible and trustee agencies (public agencies that have a level of discretionary approval over some component of the proposed Project); and



### 3) The Riverside County Clerk.

The *Notice of Intent* also will be noticed to the general public in the *Record Gazette*, which is a primary newspaper of circulation in the areas affected by the Project.

The *Notice of Intent* identifies the location(s) where the Initial Study Checklist/Negative Declaration and its associated technical reports are available for public review. During the 20-day public review period, comments on the adequacy of the Initial Study Checklist/Negative Declaration document may be submitted to the City of Banning Community Development Department, Planning Division.

Following the 20-day public review period, the City of Banning Planning Division will review any comment letters received during the review period to determine whether any substantive comments were provided that may warrant revisions or recirculation of the Initial Study Checklist/Negative Declaration document. If recirculation is not required (as defined by CEQA Guidelines §15073.5(b)), written and/or oral responses will be provided to the City of Banning Planning Commission for review as part of their deliberations concerning the Project.

For this Project, the Banning Planning Commission's role is advisory and will recommend that the Banning City Council approve, conditionally approve, or deny the Project. Accordingly, a public hearing will be held before the Banning City Council to consider the proposed Project, any comments received and make a determination on the adequacy of this Initial Study Checklist/Negative Declaration.

At the conclusion of the public hearing process, the City Council will take action to approve, conditionally approve, or deny the proposed Project. If approved, the City Council will adopt findings relative to the Project's environmental effects as disclosed in the Initial Study Checklist/Negative Declaration and a *Notice of Determination* will be filed with the Riverside County Clerk.

## 1.5 Initial Study Checklist/ Negative Declaration Findings and Conclusions

Section 3.0 of this document contains the Environmental Checklist/Initial Study that was prepared for the proposed Project pursuant to CEQA and City of Banning requirements.

The Initial Study Checklist determined that implementation of the proposed Project would result in **no impacts** to the environment under the following issue areas:

- Aesthetics
- Agriculture and Forestry Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Geology and Soils
- Greenhouse Gas Emission
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use Planning
- Mineral Resources
- Noise

- Population and Housing
- Public Services
- Recreation
- Transportation/Traffic
- Tribal Cultural Resources
- Utilities and Service Systems, and,
- Mandatory Findings of Significant

The Initial Study Checklist determined that the proposed Project will not result in creating **significant environmental effects**. The Project incorporates conditions such that the project will either avoid or mitigate effects to a point where clearly no significant environmental impacts on the environment would occur:

The Initial Study Checklist determined that, with the incorporation of conditions of approval and mitigation cited in the initial study, there is no substantial evidence, in light of the whole record before the Lead Agency (City of Banning), that the Project as revised may have a significant effect on the environment. Therefore, based on the findings of the Initial Study Checklist, the City of Banning determined that a Mitigated Negative Declaration is the appropriate CEQA determination for the Project pursuant to CEQA Guidelines § 15070(b).

## 2.0 PROJECT BACKGROUND

### 2.1 Project Location

The City of Banning covers approximately 23.2 square miles within the County of Riverside. The City is bordered by the City of Beaumont to the west, Morongo Band of Mission Indians to the east and County of Riverside to the north and south. Specifically, the property is located on vacant land north of East Wilson Street and south of Hoffer Street, between Alessandro Street on the west and Florida Street to the east, as depicted on the U.S. Geological Survey (USGS) 7.5 Minute, Cabazon quadrangle map (USGS 1996). Refer to Figure 1, *Location Map/Aerial Photo*.

The Project site includes the following Assessor Parcel Numbers:

#### APN#

- 534-183-014
- 534-200-004
- 534-200-008
- 534-200-047

### 2.2 Existing Site Conditions/Environmental Setting

CEQA Guidelines §15125 establishes requirements for defining the environmental setting to which the environmental effects of a proposed project must be compared. The environmental setting is defined as “the physical environmental conditions in the vicinity of the project, as they exist at the time the Notice of Intent/Notice of Availability is published, or at the time the environmental analysis is commenced...” (CEQA Guidelines §15125[a]).

The Project site consists of approximately 10.67 gross acres consisting of four parcels as noted in Figure 1. The Tentative Tract Map will consolidate the four parcels to create 39 residential lots and three lettered lots. The existing site is an undeveloped infill parcel primarily covered with dry, tall grasses with scattered low bushes that slopes generally from the northwest to the southeast, with an elevation of 2,452' at the northeast and an elevation of 2,422' at the southeast. No structures exist onsite as shown in the photos and no protected plant or animal species reside on the property. A line of utility poles is present, running north-south in the western half of the site.

The site is roughly rectangular in shape and is bound by residential development to the north and west. Primary access to the site will be from three cul-de-sacs off of Wilson Street which service 84 percent of the subdivision. The exceptions include Lots 7 and 39 which front Hoffer Street and lots 35-38 which front Florida Street. Based on historical records such as aerial photographs, and topographic maps, the subject property appeared as undeveloped property from at least 1953 through 2009. Table 1 below provides a summary of the site's historical use as researched by EEL Geotechnical & Environmental Solutions.

Figure 1



**Table 1: Site's History**  
**Summary of Historical Use**

Year	Source and Scale	Comments
1953	Aerial Photograph	Subject property appeared as an open field with no structural development. Adjacent property along the northern property border and to the east, west and in the surrounding area appeared with residential development. Property to the south was undeveloped.
1967	Aerial Photograph	Subject site remained undeveloped. Additional residential development appeared on the adjacent property to the north, east, and west.
1976	Aerial Photograph	No apparent changes appeared on the site or adjacent property since the 1967 photo.
1988	Topographic Map	No changes noted on the subject site since 1976.
1996	Topographic Map	No changes noted on the subject site since the 1988 map.
2002	Aerial Photo	No changes noted on the subject property or adjacent property since 1994.
2009	Aerial Photo	Subject property appears in its current configuration as undeveloped land. Surrounding area appeared as a mix of residential and commercial property.

Southern California Gas Company is available to provide gas to the site. Water, sewer and electric utilities are available through the City of Banning. A gas line is present near the southeast corner of the parcel, and a Southern California Natural Gas transmission line runs parallel to the southern

property line along East Wilson (EEI, Phase I, pg. 12). Table 2 notes the existing land uses located adjacent to the site.



**Table 2. Existing Land Uses**

Location	Existing Use
Site	Vacant
North	Single-Family Residential
South	School
East	Single-Family Residential
West	Single Family Residential
<i>Source: Banning General Plan/Zoning Overlay</i>	

### 2.3 Existing General Plan Land Use and Zoning Designations

Development activities that occur in the City of Banning are regulated by the City of Banning General Plan, adopted January 31, 2006, and the Zoning Code, referenced as Title 17 of the City of Banning Municipal Code. The General Plan is divided into a number of zoning districts that provide additional guidance for development and more specific land use designations under each category. Each property has a land use designation and a more descriptive Area Plan designation.

The designation for the Project site is Low Density Residential (LDR). The project has gained approval from the Riverside Airport Land Use Commission that determined the project is in compliance with Compatibility Zone D, November 8, 2018. The project proposes a net density of 3.84 du/net acre.



A summary of the existing General Plan land use and zoning designations for the Project site and surrounding properties is provided in Table 3.

**Table 3. Existing General Plan and Zoning Designations**

<b>Location</b>	<b>General Plan Designation</b>	<b>Zoning Designation</b>
Site	Low-Density Residential	(0-5 du/ac)
North	Low Density Residential	(0-5 du/ac)
South	Public Facilities	Pre-School
East	Low-Density Residential	(0-5 du/ac)
West	Low Density Residential (0-5 DU/Acre)	(0-5 du/ac)
<i>Source: City of Banning General Plan Land Use Map, City of Banning-Existing Zoning Map</i>		

## **2.4 Project Description**

The Project Applicant, Randall Andrus, submitted the following applications to the City of Banning which comprise the proposed Project: Tentative Tract Map (TTM 36710) and Variance 19-3001. The City of Banning refers to the application as TTM 36170.

The Project's application materials are on file with the City of Banning Planning Department, 99 East Ramsey Street, Banning, CA 92220 and are hereby incorporated by reference.

### **A. Tentative Tract Map (TTM 36710) and Variance 19-3001.**

The project applicant is seeking approval of TTM 36710 and Variance 19-3001, which proposes to subdivide a vacant 10.6-acre site into 39 single-family residential lots with a minimum lot size of 7,000 square feet. The project was found to be consistent with the 2004 Banning Municipal Airport Land Use Compatibility Plan, as amended in 2016 and to conform to the Riverside Airport Land Use Commission (ALUC) and the Federal Aviation Administration (FAA) regarding density, height, air space and open space restrictions. The project is driven largely in part by the Riverside County Airport Land Use Commission's requirement of maintaining a density at (or near) 5 du/acre in Zone D of the Banning Municipal Airport. The site currently consists of four individual vacant parcels containing the following lot areas as noted in Table 4 below.

**Table 4: Lot Area Characteristics**

<b>APN</b>	<b>Lot Area</b>
534-183-014	4.01
534-200-004	3.77
534-200-008	0.92
534-200-047	1.85

The total gross area of the four parcels is 10.67 acres. They propose, three lettered lots for use as detention basins. Residential lot sizes will range from 5,880 square feet to 13,550 square feet in size. Access to the site is off Wilson Street and will be by means of three neighborhood streets

ending as cul-de-sacs, with the exception of Lots 35-38 which flank Florida Street and Lots 7 and 39 which flank Hoffer Street.

The above land uses and other on-site improvements are further described as follows:

#### Single-Family Residential

The Project site will be a Tentative Tract Map. Residential lot sizes range from 5,880 square feet to 13,550 square feet for certain cul-de-sac lots. However, the majority of the lot sizes are within the 7,000 square foot range. The Project proposes a net density of 3.84 dwelling units per acre.

#### Water Quality Basin

The three lettered lots will serve as detention basins to handle on-site and off-site storm flows.

#### On-Site Street Improvements

Primary access to the Project site is by means of three neighborhood cul-de-sac streets connected off Wilson Street. Lots 7 and 39 will obtain access from Hoffer Street, Lots 35 through 38 will obtain access from Florida Street. Both Hoffer and Florida Streets are existing improved two (2) lane sixty (60) foot wide roadways within the Public right-of-way. Curb, gutter, and sidewalk have been partially installed. All street improvements along Wilson Street will be subject to the City of Banning Engineering and Public Works requirements.

The three internal neighborhood streets servicing the tract with curb and gutter within 60-foot wide public two lane travel lanes are indicated on the TTM as Street A, Street B and Street C. None of the streets interconnect, but each street connects to Wilson Street. Cul-de-sac's shall be designed in accordance with radius requirements set by the County Fire Code.

#### On-Site Utility and Drainage Improvements

Water, sewer and electrical service will be provided by the City of Banning Public Works Department and Electrical Division. Sewer and water systems shall be designed in accordance with the City of Banning Engineering and Public Works requirements.

Existing water lines are contained within Hoffer Street, Wilson Street and Florida Street running adjacent to the project site. Existing sewer lines are contained within Hoffer and Florida Street also adjacent to the project site. With the projects cul-de-sac design, the majority of the lots will connect to the proposed sewer line in Wilson Street, with the exception of Lot 7 and Lot 39 which will connect to the existing sewer line in Hoffer Street and Lots 35-38 which will connect to the existing sewer line in Florida Street.

### **B. Construction Schedule**

Houses will be constructed based on market demand and absorption. Construction is expected to commence sometime in 2019 and is expected to occur in one phase. The Project Applicant expects the following time durations for the construction process, which would be somewhat sequential but overlap in some cases:

- Site Preparation 20 Days



- Grading 40 - days
- 1<sup>st</sup> Phase of Home Construction 60- days
- Architectural Coating 38 - days
- Paving 55 - days

#### Earthwork and Grading

The earthwork and grading details are based on proposed Tentative Tract Map 36710. The Project proposes 13,600 cubic yards (c.y.) of cut and 13,600 cubic yards of fill (TTM Earthwork Quantities). The site drains northwest to southeast with a varying terrain at an average slope of 4 percent (Drainage Report, United Engineering Group, Sept, 6, 2016).

#### **E. Operational Characteristics**

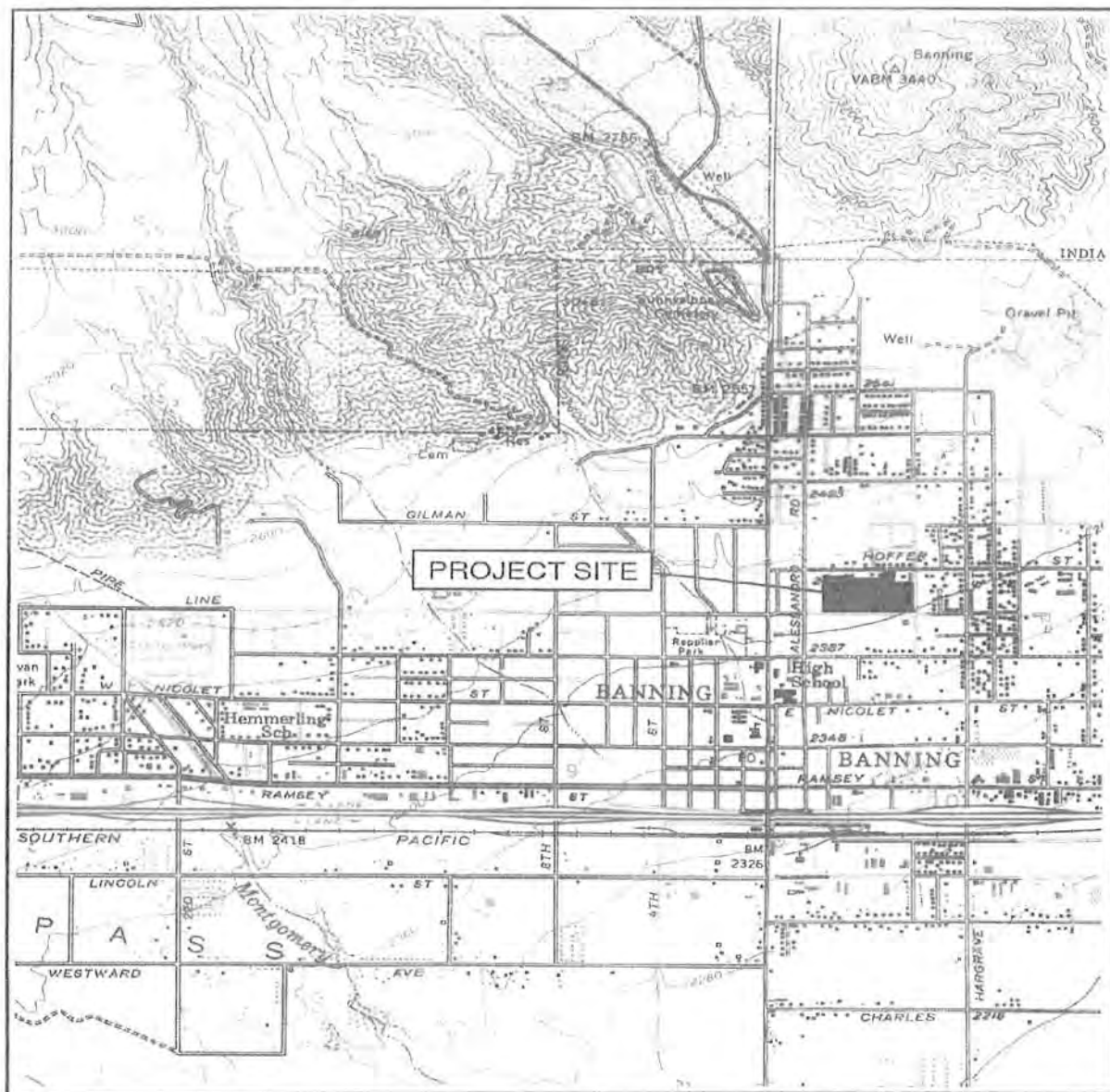
The proposed Project would be operated as a residential community. Typical operational characteristics include residents and visitors traveling to and from the site, leisure and maintenance activities occurring on individual residential lots and in the on-site recreational facilities and general maintenance of common areas. Low levels of noise and a moderate level of artificial exterior lighting typical of a residential community is expected.

#### Future Population

The Project would be developed with 39 single-family detached residential homes. Pursuant to City of Banning's General Plan, the median household size is currently 2.7 persons per dwelling unit. Using population generation estimates, the proposed Project could increase the City of Banning's population by up to 105 new residents if all the new residents currently reside outside the City limits. The City of Banning's 2016 population estimates (city limits only) as determined by the California Department of Finance is 31,292 residents. The City's population would increase by less than (0.5) percent or 31,448 residents. The Project is consistent with the Southern California Association of Governments (SCAG) population growth estimates in that the City's population is projected to reach 34,658 in 2010 and 42,027 in 2020. According to the City's Housing Element Regional Housing Needs Assessment (RHNA), the City of Banning has a total housing construction need of 1,780 units and an annual need of 237 units. The Project is consistent with the RHNA housing construction forecast efforts to meet the City's housing needs.

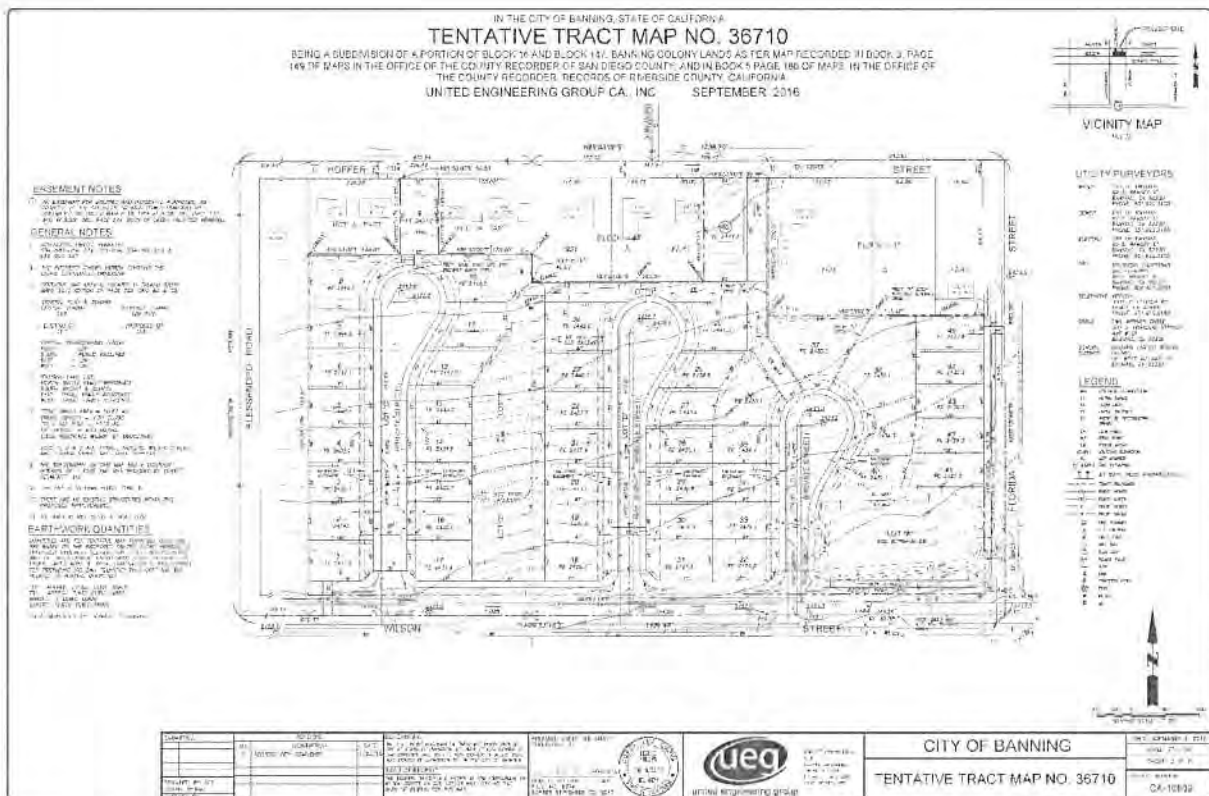
The *General Plan* land use designation currently assigned to the Project site is Low Density Residential (0-5 dwelling units per acre). The Project as proposed has a net density of 3.84 dwelling units per acre.

If the Project site were built out in accordance with its existing *General Plan* land use designation, a maximum of 53 residential dwelling units could be constructed on the property. (Low Density Residential x 5 units per acre x 10.6 acres = 53 units). The Project proposes 39 residential dwelling units which is below the maximum permitted under the *General Plan* and current Zoning District.



Location Map/Aerial Photo

Exhibit 1



**RMG Residential 2010, LLLP**  
**Project No. 15-7004**

**Illustrative Lot Layout**  
**TTM 36710**

**Exhibit 2**

### 3.0 INITIAL STUDY/ENVIRONMENTAL CHECKLIST

#### Evaluation Format

This Initial Study Checklist has been prepared in compliance with the California Environmental Quality Act (CEQA) Guidelines. The Project is evaluated based on its potential effect on eighteen (18) environmental factors categorized as follows, as well as Mandatory Findings of Significance:

- |                                     |  |
|-------------------------------------|--|
| 1. Aesthetics                       | 10. Land Use & Planning                |
| 2. Agriculture & Forestry Resources | 11. Mineral Resources                  |
| 3. Air Quality                      | 12. Noise                              |
| 4. Biological Resources             | 13. Population & Housing               |
| 5. Cultural Resources               | 14. Public Services                    |
| 6. Geology & Soils                  | 15. Recreation                         |
| 7. Greenhouse Gas Emissions         | 16. Transportation & Traffic           |
| 8. Hazards & Hazardous Materials    | 17. Tribal Cultural Resources          |
| 9. Hydrology & Water Quality        | 18. Utilities & Service Systems        |
|                                     | 19. Mandatory Findings of Significance |

Each factor is analyzed by responding to a series of questions pertaining to the impact of the Project on the particular factor in the form of a checklist. This Initial Study Checklist provides a manner to analyze the impacts of the Project on each factor in order to determine the severity of the impact and determine if mitigation measures can be implemented to reduce the impact to less than significant without having to prepare an Environmental Impact Report.

CEQA also requires Lead Agencies to evaluate potential environmental effects based to the fullest extent possible on scientific and factual data (CEQA Guidelines §15064[b]). A determination of whether or not a particular environmental impact will be significant must be based on substantial evidence, which includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts (CEQA Guidelines §15064f[5]).

The effects of the Project are then placed in the following four categories, which are each followed by a summary to substantiate why the Project does not impact the particular factor with or without mitigation. If "Potentially Significant Impacts" that cannot be mitigated are determined, then the Project does not qualify for a Mitigated Negative Declaration and an Environmental Impact Report must be prepared:

<b><i>Potentially Significant Impact</i></b>	<b><i>Less Than Significant Impact with Mitigation Incorporated</i></b>	<b><i>Less Than Significant Impact</i></b>	<b><i>No Impact</i></b>
Potentially significant impact(s) have been identified or anticipated that cannot be mitigated to a level of insignificance. An Environmental Impact Report must therefore be prepared.	Potentially significant impact(s) have been identified or anticipated, but mitigation is possible to reduce impact(s) to a less than significant category. Mitigation measures must then be identified.	No "significant" impact(s) identified or anticipated. Therefore, no mitigation is necessary.	No impact(s) identified or anticipated. Therefore, no mitigation is necessary.

Throughout the impact analysis in this Initial Study Checklist, reference is made to the following:

- **Plans, Policies, Programs (PPP)** – These include existing regulatory requirements such as plans, policies, or programs applied to the Project based on the basis of federal, state, or local law currently in place which effectively reduce environmental impacts.
- **Project Design Features (PDF)** – These measures include features proposed by the Project that are already incorporated into the Project's design and are specifically intended to reduce or avoid impacts (e.g., water quality treatment basins).
- **Mitigation Measures (MM)** – These measures include requirements that are imposed where the impact analysis determines that implementation of the proposed Project would result in significant impacts. Mitigation measures are proposed to reduce impacts to less than significant levels. In accordance with the requirements of *CEQA*.

Plans, Policies, or Programs (PPP) and the Project Design Features (PDF) were assumed and accounted for in the assessment of impacts for each issue area.

Mitigation Measures (MM) were formulated only for those issue areas where the results of the impact analysis identified significant impacts that could be reduced to less than significant levels.

All three types of measures described above will be required to be implemented as part of the Project, and will be included in the Mitigation Monitoring and Reporting Program for the Project.

### **Environmental Factors Potentially Affected**

The environmental factors checked below would be potentially affected by this Project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

	Aesthetics		Land Use and Planning
	Agriculture and Forest Resources		Mineral Resources
	Air Quality		Noise
	Biological Resources		Population and Housing
	Cultural Resources		Public Services
	Geology and Soils		Recreation
	Greenhouse Gas Emissions		Transportation/Traffic
	Hazards and Hazardous Materials		Tribal Cultural Resources
	Hydrology and Water Quality		Utilities and Service Systems
			Mandatory Findings of Significance

Because none of the environmental factors above are "checked", the Project does not require the preparation of an Environmental Impact Report.



**Determination**

On the basis of this initial evaluation:

I find that the proposed use COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be recommended for adoption.

☐

I find that although the proposal could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the Project have been made by or agreed to by the Project Applicant. A MITIGATED NEGATIVE DECLARATION will be recommended for adoption.

☒

I find that the proposal MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐

I find that the proposal MAY have a significant effect(s) on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets, if the effect is a "potentially significant impact" or "potentially significant unless mitigated." An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐

I find that although the proposed Project could have a significant effect on the environment, because all potentially significant effect (s) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION, pursuant to all applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures are imposed upon the proposed Project, nothing further is required.

☐

\_\_\_\_\_  
Signature

\_\_\_\_\_  
City of Banning  
Agency

Mark de Manincor  
Contract Planner

\_\_\_\_\_  
Printed Name/Title

\_\_\_\_\_  
Date



**Appendices (On Compact Disk)**

- Appendix A. Phase I Environmental Site Assessment, The McRae Group, August 23, 2011
- Appendix B. Geotechnical Engineering Study, The McRae Group, April 4, 2014
- Appendix C. General Biological Resources Assessment & Burrowing Owl Habitat Assessment, RCA Associates, LLC, January 16, 2014
- Appendix D. Preliminary Drainage Report, United Engineering Group, September 6, 2016
- Appendix E. Focused Traffic Impact Study, RK Engineering Group, Inc., July 11, 2016
- Appendix F. Air Quality and Greenhouse Gas Impact Study, RK Engineering Group, Inc., May 31, 2016
- Appendix G. Airport Land Use Commission, Riverside County letter, November 15, 2018
- Appendix H. Federal Aviation Administration, Determination of no Hazard letter, February 12, 2016
- Appendix I. Cultural Assessment Report, BCR Consulting LLC, May 1, 2017

### 3.1 Aesthetics

<i>Would the Project:</i>	<b>Potentially Significant Impact</b>	<b>Less Than Significant Impact With Mitigation Incorporated</b>	<b>Less Than Significant Impact</b>	<b>No Impact</b>
a. Have a substantial adverse effect on a scenic vista?				■
b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?				■
c. Substantially degrade the existing visual character or quality of the site and its surroundings?			■	
d. Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?				■

#### **3.1 (a.)** *Have a substantial adverse effect on a scenic vista?*

**Determination: No Impact.**

*Sources: General Plan, City of Banning, Google Earth, Project Application Materials, EEl Phase I Environmental Site Assessment, August 23, 2011.*

#### **Plans, Policies or Programs (PPP)**

The following applies to the Project and would reduce impacts related to scenic vistas. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

PPP 3.1-1      Banning Zoning Code: As required by the City of Banning Zoning Regulations, Table 17.08.030, residential building heights shall not exceed thirty-five (35) feet in height.

#### **Project Design Features (PDF)**

Architecturally, there are no Project Design Features applicable to the Project related to this issue.

#### **Impact Analysis**

The site is a 10.67-acre vacant lot which is currently zoned Low Density Residential (0-5 du/ac). The project proposes a Tentative Tract Map with 3.84 dwelling units per net acre. The site is bounded by residential development to the north; East Wilson Street to the south; Florida Street to the east; and residential development to the west. The property ranges from approximately 2,422 feet above mean sea level (amsl) at the southeast margin and rises in elevation to approximately 2,452 feet amsl at the northwest margin of the property. The property consists of land which gently slopes in a southeasterly direction. The property has remained undeveloped from at least 1953 through 2009 based on historical photographs and topographic maps (EEl, Phase I Site Assessment, pg. 2). Based on the Banning General Plan, Archaeological Resources Sensitivity Map (Exhibit IV-6)

the site is within a Low Sensitivity Assessment Archaeological Resources District. Consequently, it is not anticipated that the site's housing development will have impacts to these sensitive resources.

With the implementation of PPP 3.1-1, the project will have no impacts to aesthetics or scenic vista.

---

**3.1 (b)      *Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?***

---

**Determination: No Impact.**

*Sources: Banning General Plan, Google Earth, EEI Phase I Env. Assessment, Aug. 23, 2011.*

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project related to this issue.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project related to this issue.

**Impact Analysis**

As referenced in 3.1 (a), the Project site will not impact a scenic vista. Moreover, given the undeveloped history of the site, no historic buildings will be impacted since the site contains no structures with the exception of a line of utility poles running north-south in the western half of the site as noted in the photos. In general, the subject property is surrounded by older single-family residential properties with a school site located to the south across East Wilson Street. Based on EEI's Phase I Environment Site Assessment report dated August 23, 2011, the following findings were noted:

- Historical Recognized Environmental Conditions (REC): No known or suspected Historic REC's were revealed during the preparation of the EEI's Phase I Environmental Site Assessment.
- Known or suspected REC's – No known or suspected REC's were revealed during the preparation of EEI's Phase I Environmental Site Assessment.
- *De Minimis* Conditions – No *De Minimis* conditions were revealed during the preparation of EEI's Phase I Environmental Site Assessment. A *de minimis* impact is one that, after taking into account avoidance, minimization, mitigation and enhancement measures, results in no adverse effect to the activities.

Based on the EEI Phase I findings, no impacts to scenic resources, rock outcroppings or historic buildings will result.

---

**3.1 (c)      *Substantially degrade the existing visual character or quality of the site and its surroundings?***

---

**Determination: Less than Significant.**

*Sources: Banning General Plan, Google Earth, EEI Phase I Environmental Assessment, Aug. 23, 2011.*

**Plans, Policies, or Programs (PPP)**

The following applies to the Project and would reduce impacts related to the visual character and quality of the site and its surroundings. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

PPP 3.1-1      Banning Zoning Code: As required by the City of Banning Zoning Regulations, Table 17.08.030, residential building heights shall not exceed thirty-five (35) feet in height.

**Project Design Features (PDF)**

PDF 3.1-1      The project site will be a Tentative Tract Map (TTM) and incorporate specific land use and Right-of-Way (ROW) design features unique to the Project.

**Impact Analysis**

Development of the Project would introduce residential development onto the site. The residential development will consist of single-family detached homes, with related improvements such as roadways, landscaping, walls, and public street lighting. These improvements would be implemented in accordance with the design standards of the Banning Municipal Code. Although the existing undeveloped character of the site will change, it will not substantially change the character of the Project site such that it becomes visually incompatible or visually unexpected when viewed in the context of its residential surroundings. Moreover, it is not anticipated that the 60-foot wide street ROW, that will be maintained by the City of Banning.

Based on the analysis above, with implementation of PPP 3.1-1 and PDF 3.1-1, impacts associated with visual character or quality will be less than significant and no mitigation measures are required.

---

**3.1 (d)      *Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?***

---

**Determination: No Impacts.**

*Sources: City of Banning Zoning Standards, Project Application Materials, Riverside County Airport Land Use Commission letter, November 15, 2018.*

**Plans, Policies, or Programs (PPP)**

The following applies to the Project and would reduce impacts related to light and glare. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

PPP 3.1-2 The Project site is within Zone D of the Banning Municipal Airport Compatibility Map. Consequently, object heights are limited to 35 feet.

### **Project Design Features (PDF)**

PDF 3.1 -2 Any Public Street Lighting shall not exceed 35 feet in height.

### **Impact Analysis**

The project site is situated within Zone D of the Banning Municipal Airport Land Use Compatibility Plan. In accordance with a letter received from the, Riverside County, Airport Land Use Commission letter, November 15, 2018, all outdoor lighting shall be hooded or shielded to prevent either the spillage of lumens or reflection into the sky. Outdoor lights shall be downward facing and light structures shall be no more than 35 feet in height to mitigate the potential for aircraft to mistake public lighting for airport lighting. Pursuant to Chapter 2, Section 1.5.3 (4)(11) of the Riverside County Airport Land Use Compatibility Plan Policy Document, a "Major Land Use Action that proposes development consisting of five or more dwelling units that may incorporate lighting which could be mistaken for airport lighting is required to be reviewed by the Riverside County Airport Land Use Committee. (ALUC). The project's conditions of approval incorporate the lighting features designed for the proposed project.

Based on the analysis above, with the associated Conditions of Approval, and recommendations by Airport Land Use Commission, there will be no impacts with implementation of PPP 3.1-1, 3.1-2, and PDF 3.1-1 and PDF 3.1 -2.

## 3.2 AGRICULTURE AND FORESTRY RESOURCES

<i>In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment Project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the Project:</i>	Potentially Significant Impact	Less Than Significant Impact With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?				■
b. Conflict with existing zoning for agricultural use, or a Williamson Act contract?				■
c. Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?				■
d. Result in the loss of forest land or conversion of forest land to non-forest use?				■
e. Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?				■



---

**3.2 (a)      *Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?***

---

**Determination: No Impact**

*Sources: Banning General Plan Land Use Map, Zoning Map*

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project related to this issue.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project related to this issue.

**Impact Analysis**

The site does not contain any lands designated as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance as mapped by the State Department of Conservation Farmland Mapping and Monitoring Program. As such, the Project has no potential to convert such lands to a non-agricultural use and no impact would occur. No mitigation measures are required.

---

**3.2 (b)      *Conflict with existing zoning for agricultural use, or a Williamson Act contract?***

---

**Determination: No Impact.**

*Sources: Banning General Plan Land Use Map, Zoning Map*

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project related to this issue.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project related to this issue.

**Impact Analysis**

The Project site will be a TTM. Given the scale of the residential subdivision of 39 lots and 3 lettered lots, the Project will not conflict with existing zoning for agricultural use. Pursuant to the California Land Conservation Act of 1965, a Williamson Act Contract enables private landowners to voluntarily enter into contracts with local governments for the purpose of restricting specific parcels of land to agricultural or related open space use. In return, landowners receive lower property tax assessments based upon farming and open space uses as opposed to full market value. The site is not under a Williamson Act Contract. As such, there is no impact. No mitigation measures are required.



---

**3.2 (c)**     *Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?*

---

**Determination: No Impact.**

*Sources: Banning General Plan Land Use Map, Zoning Map.*

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project related to this issue.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project related to this issue.

**Impact Analysis**

The Project site is considered in-fill. The project is compatible with surrounding low-density residential uses. No forest land, timberland, or timberland production occurs on the site so zoning for such uses or activities will not be impacted. Therefore, no impacts would occur and no mitigation measures are required.

---

**3.2 (d)**     *Result in the loss of forest land or conversion of forest land to non-forest use?*

---

**Determination: No Impact.**

*Source: Field Survey.*

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project related to this issue.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project related to this issue.

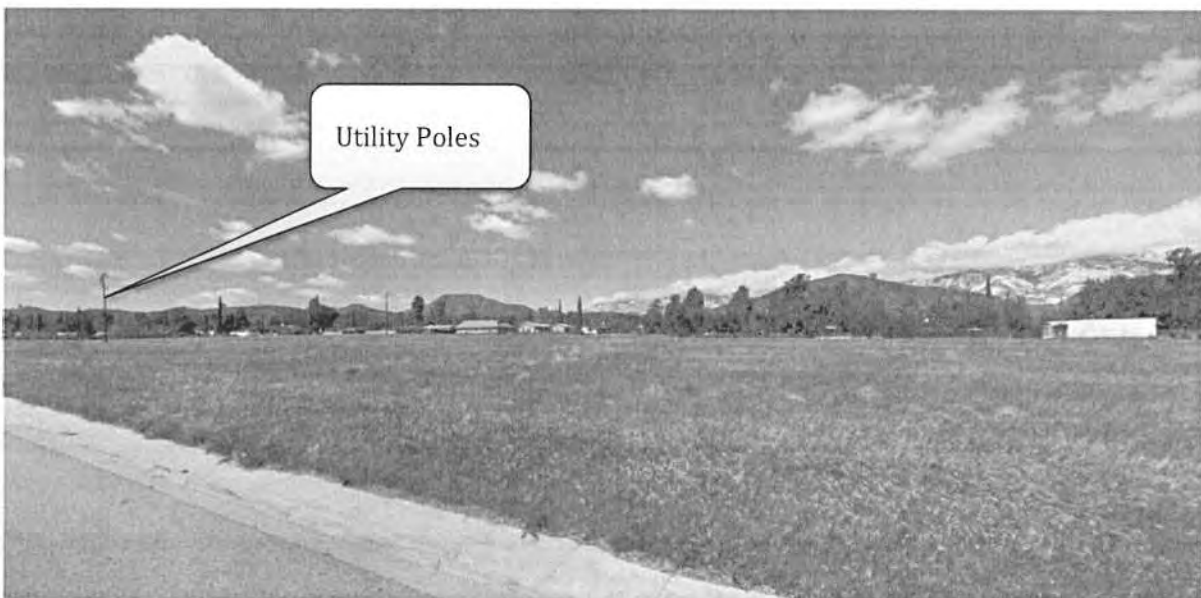
**Impact Analysis**

The Project site consists of vacant land and does not contain forest land as noted in the photos on the following page. Therefore, no impacts would occur and no mitigation measures are required.

Project Site  
North View



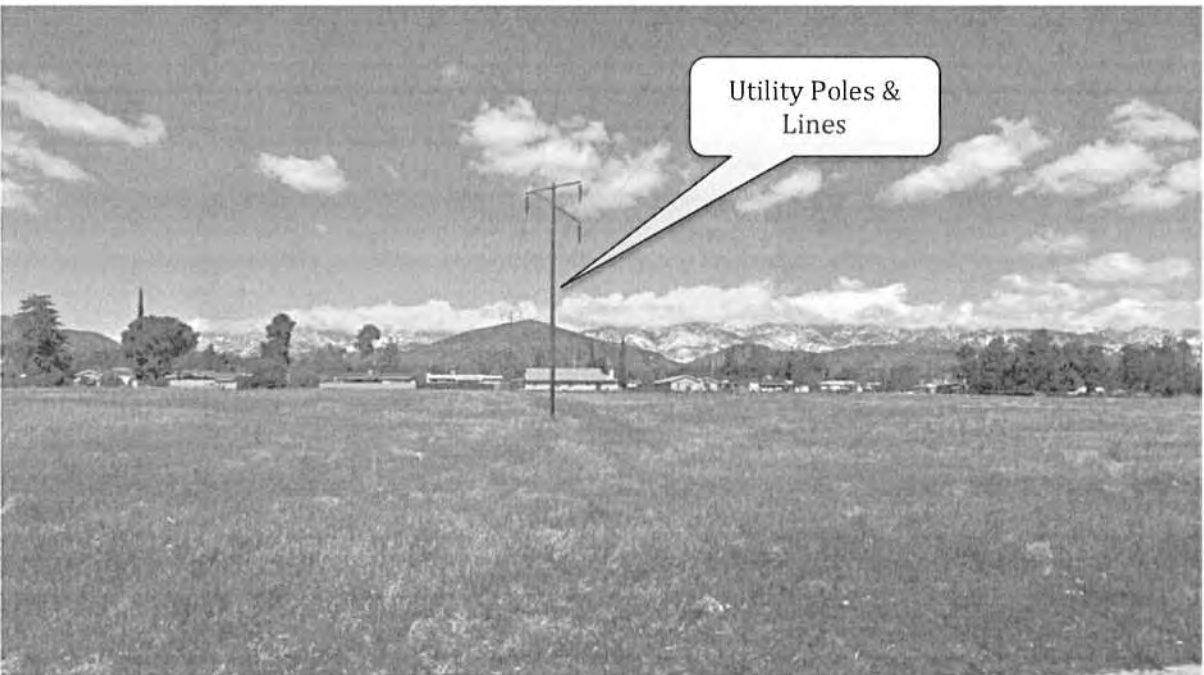
Project Site  
Northwest View



Project Site  
Northeast View



Project Site  
North View



---

**3.2 (e)** *Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?*

---

**Determination: No Impact.**

*Sources: Banning General Plan Land Use Map*

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project related to this issue.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project related to this issue.

**Impact Analysis**

The Project site is approximately 10.67-acres in size. The residential in-fill development will be a Tentative Tract Map. The project is characteristic of the existing low density zoned residential development located nearby and largely characterized by residential single family housing. There is no land being used primarily for agricultural purposes in the vicinity of the site. As such, the Project would not result in conversion of Farmland to non-agricultural use and no impacts would occur. No mitigation measures are required.

### 3.3 AIR QUALITY

<i>Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the Project:</i>	<b>Potentially Significant Impact</b>	<b>Less Than Significant Impact With Mitigation Incorporated</b>	<b>Less Than Significant Impact</b>	<b>No Impact</b>
a. Conflict with or obstruct implementation of the applicable air quality plan?			■	
b. Violate any air quality standard or contribute substantially to an existing or projected air quality violation?		■		
c. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?			■	
d. Expose sensitive receptors to substantial pollutant concentrations?			■	
e. Create objectionable odors affecting a substantial number of people?			■	

#### ***3.3 (a) Conflict with or obstruct implementation of the applicable air quality plan (South Coast Air Quality Management District)?***

**Determination: Less than significant impact.**

*Sources: Air Quality and Greenhouse Gas Impact Study, RK Engineering Group, Inc., May 31, 2016*

#### **Plans, Policies, or Programs (PPP)**

There are no Plans, Policies or Programs applicable to the Project related to this issue.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project related to this issue.

#### **Impact Analysis**

##### *Federal Air Quality Standards*

Under the Federal Clean Air Act, the Federal Environmental Protection Agency establishes health-based air quality standards that California must achieve. These are called "national ambient air quality standards" and they apply to what are called "criteria pollutants." Ambient (i.e. surrounding) air quality standard establish a concentration above which a criteria pollutant is known to cause adverse health effects to people. The national ambient air quality standards apply to the following criteria pollutants:

- Ozone (8-hour standard)

- Respirable Particulate Matter (PM<sub>10</sub>)
- Fine Particulate Matter (PM<sub>2.5</sub>)
- Carbon Monoxide (CO)
- Nitrogen Dioxide (NO<sub>x</sub>)
- Sulphur Dioxide (SO<sub>2</sub>), and
- Lead.

#### *State Air Quality Standards*

Under the California Clean Air Act, the California Air Resources Board also establishes health-based air quality standards that cities and counties must meet. These are called “state ambient air quality standards” and they apply to the following criteria pollutants:

- Ozone (1-hour standard)
- Ozone (8-hour standard)
- Respirable Particulate Matter (PM<sub>10</sub>)
- Fine Particulate Matter (PM<sub>2.5</sub>)
- Carbon Monoxide (CO)
- Nitrogen Dioxide (NO<sub>x</sub>)
- Sulphur Dioxide (SO<sub>2</sub>), and
- Lead

#### *Regional Air Quality Standards*

The City of Banning is located within the South Coast Air Basin which is under the jurisdiction of the South Coast Air Quality Management District. The District develops plans and regulations designed to achieve these both the national and state ambient air quality standards described above.

#### *Attainment Designation*

An “attainment” designation for an area signifies that criteria pollutant concentrations did not exceed the established standard. In contrast to attainment, a “nonattainment” designation indicates that a criteria pollutant concentration has exceeded the established standard.



Table 5 shows the attainment status of criteria pollutants in the South Coast Air Basin.

**Table 5. Attainment Status of Criteria Pollutants in the South Coast Air Basin.**

Criteria Pollutant	State Designation	Federal Designation
Ozone – 1 hour standard	Nonattainment	No Standard
Ozone – 8 hour standard	Nonattainment	Nonattainment
Respirable Particulate Matter (PM <sub>10</sub> )	Nonattainment	Attainment
Fine Particulate Matter (PM <sub>2.5</sub> )	Nonattainment	Nonattainment
Carbon Monoxide (CO)	Attainment	Attainment
Nitrogen Dioxide (NO <sub>x</sub> )	Attainment	Attainment
Sulfur Dioxide (SO <sub>2</sub> )	Attainment	Attainment
Lead	Attainment	Attainment
<i>Source: South Coast Air Quality Management District, 2014</i>		

#### *Air Quality Management Plan*

The South Coast Air Quality Management District is required to produce air quality management plans directing how the South Coast Air Basin's air quality will be brought into attainment with the national and state ambient air quality standards. The most recent air quality management plan is 2016 Air Quality Management Plan and it is applicable to City of Banning. The purpose of the 2016 Air Quality Management Plan is to achieve and maintain both the national and state ambient air quality standards described above.

In order to determine if a project is consistent with the 2016 Air Quality Management Plan, the South Coast Air Quality Management District has established consistency criterion which are defined in Chapter 12, Sections 12.2 and 12.3 of the South Coast Air Quality Management District's CEQA Air Quality Handbook and are discussed below.

---

***Consistency Criterion No. 1:*** *The proposed project will not result in an increase in the frequency or severity of existing air quality violations or cause or contribute to new violations, or delay the timely attainment of air quality standards or the interim emissions reductions specified in the 2016 Air Quality Management Plan.*

---

Consistency Criterion No. 1 refers to violations of the California Ambient Air Quality Standards and National Ambient Air Quality Standards. As evaluated under Issues 3.3 (b), (c), and (d), below, the Project would not exceed regional or localized significance thresholds for any criteria pollutant during construction or during long-term operation. Accordingly, the Project's regional and localized emissions would not contribute substantially to an existing or potential future air quality violation or delay the attainment of air quality standards.

---

***Consistency Criterion No. 2:*** *The proposed project will not exceed the assumptions in the 2016 Air Quality Management Plan.*

---

The growth forecasts used in the 2016 Air Quality Management Plan to project future emissions levels are based on the projections of the Regional Transportation Model utilized by the Southern



California Association of Governments, which incorporates land use data provided by city and county General Plans, as well as assumptions regarding population number, location of population growth, and a regional housing needs assessment.

The Banning General Plan land use designation currently assigned to the Project site is Low Density Residential (0 to 5 du/ac). The site will be a TTM to accommodate a housing density less than the 5 du/ac. If the Project site were built out in accordance with its existing *General Plan* land use designation, a maximum of 53 residential dwelling units could be constructed on the property. (Low Density Residential @ 5 units per acre x 10.6 acres = 53 units. The Project proposes 39 single family residential dwelling units, which, constitutes 90 percent of the development potential of the site.

The 2016 Air Quality Management Plan relied in part upon the City's General Plan for the growth forecast estimates used in the 2016 Air Quality Management Plan. As such, the Project would not exceed the assumptions in the 2016 Air Quality Management Plan because it does not exceed the growth forecasts contained in the Plan.

For the reasons stated above, the Project would not result in an increase in the frequency or severity of existing air quality violations or cause or contribute to new violations, delay the timely attainment of air quality standards or the interim emissions reductions specified in the 2016 Air Quality Management Plan. In addition, the Project would not exceed the growth assumptions in the 2016 Air Quality Management Plan. As such, the Project would be consistent with the 2016 Air Quality Management Plan and impacts would be less than significant and no mitigation measures are required.

---

**3.3(b) *Violate any air quality standard or contribute substantially to an existing or projected air quality violation?***

---

**Determination: Less than Significant Impact with Mitigation.**

*Sources: California Emissions Estimator Model, South Coast Air Quality Management District, Air Quality Management Plan, CEQA Air Quality Handbook, Project Application Materials, Air Quality and Greenhouse Gas Impact Study (RK Engineering Group, Inc., May 31, 2016)*

**Plans, Policies, or Programs (PPP)**

The following apply to the Project and would reduce impacts related to air quality violations. These measures will be included in the project's Mitigation Monitoring and Reporting Program:

- PPP 3.3-1      The Project is required to comply with the provisions of South Coast Air Quality Management District Rule 402, A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property.
- PPP 3.3-2      The Project is required to comply with Rule 403 "Fugitive Dust." Rule 403 requires implementation of best available dust control measures during construction activities that generate fugitive dust, such as earth moving and stockpiling activities, grading, and equipment travel on unpaved roads.

### Project Design Features (PDF)

There are no Project Design Features applicable to the Project related to this issue.

### Impact Analysis

The South Coast Air Quality Management District has developed regional and localized significance thresholds for regulated pollutants. Any project in the South Coast Air Basin with daily emissions that exceed any of the indicated regional or localized significance thresholds would be considered to contribute to a projected air quality violation. The Proposed Project's regional and localized air quality impacts are discussed below as shown in Table 6.

#### *Regional Impact Analysis*

As with any new development project, the Proposed Project has the potential to generate pollutant concentrations during both construction activities and long-term operation. The following provides an analysis based on the applicable regional significance thresholds established by the South Coast Air Quality Management District in order to meet Federal and State air quality standards.

**Table 6. South Coast Air Quality Management District Air Quality Regional Significance Thresholds**

Pollutant	Emissions (Construction) (pounds/day)	Emissions (Operational) (pounds/day)
NOx	100	55
VOC	75	55
PM10	150	150
PM2.5	55	55
Sox	150	150
CO	550	550
Lead	3	3
<i>Source: South Coast Air Quality Management District CEQA Air Quality Significance Thresholds (2009)</i>		

Both construction and operational emissions for the Project were estimated by using the California Emissions Estimator Model which is a statewide land use emissions computer model designed to provide a uniform platform for government agencies to quantify potential criteria pollutant emissions associated with both construction and operations from a variety of land use projects. The model can be used for a variety of situations where an air quality analysis is necessary or desirable such as California Environmental Quality Act (CEQA) documents and is authorized for use by the South Coast Air Quality Management District.

#### *Construction Related Impacts*

Construction activities associated with the proposed Project will result in emissions of CO, VOCs, NOx, SOx, PM<sub>10</sub>, and PM<sub>2.5</sub>. Construction related emissions are expected from the following onsite and offsite construction activities and time duration:

- Site Preparation 20 Days
- Grading 40 Days
- 1<sup>st</sup> Phase of Home Construction 60 Days
- Architectural Coating 38 Days
- Paving 55 Days

Table 3 shows the South Coast Air Quality Management District daily criteria pollutant emissions thresholds for construction and operation and the proposed projects estimated emissions for construction and operation, in the Basin, using the CalEEMod Model Version 2013.2.2, released, October 2, 2013.

**Table 7. SCAQMD Emissions Thresholds**

Emissions Source	Pollutant Thresholds (pounds per day)					
	VOC	NOX	CO	SO2	PM <sub>10</sub>	PM <sub>2.5</sub>
Construction	43.90	69.66	47.68	0.06	9.78	6.37
Construction Thresholds	100	75	150	55	150	550
Operational	5.65	4.69	21.35	0.04	2.45	0.79
Operational Thresholds	55	55	150	55	150	550
	No	No	No	No	No	No
<i>Source: RK Engineering Group, Inc., Air Quality and Greenhouse Gas Impact Study, May 31, 2016</i>						

As shown in Table 7 above, construction and operational related emissions would not exceed South Coast Air Quality Management District regional construction criteria thresholds. With implementation of PPP 3.3-1 above (includes increasing wetting disturbed areas to 3-times per day, reduce speed to 25 mph on unpaved areas of project, and cleaning paved access roads daily) PM<sub>10</sub> emissions are reduced.

#### Fugitive Dust

Fugitive dust emissions are generally associated with land clearing and exposure of soils to the air and wind, including cut-and-fill grading operations. Dust generated during construction varies substantially on a project-by-project basis, depending on the level of activity, the specific operations and weather conditions at the time of construction. The proposed project will be required to comply with SCAQMD Rules 402 and 403 to control fugitive dust.

**Table 8: Short-Term Regional Construction Emissions**

Activity	VOC	NO <sub>x</sub>	CO	SO <sub>2</sub>	PM <sub>10</sub>	PM <sub>2.5</sub>
Site Preparation	4.90	51.82	40.19	0.04	9.78	6.37
Grading	6.17	69.66	47.68	0.06	6.77	4.46
Building Construction	3.40	27.59	21.90	0.03	2.16	1.79
Paving	1.85	17.21	15.09	0.02	1.04	0.89
Architectural Coating	42.05	2.04	2.21	0.00	0.21	0.17
Maximum	43.90	69.66	47.68	0.06	9.78	6.37
SCAQMD Threshold	75	100	550	150	150	55
Exceeds Threshold (?)	No	No	No	No	No	No

#### Architectural Coatings

SCAQMD Rule 1113 governs the sale, use, and manufacturing of architectural coatings and limits the VOC content in paints and paint solvents. This rule regulates the VOC content of paints available during construction. Therefore, all paints and solvents used during construction and operation of the project must comply with Rule 1113.

Localized Impacts Analysis as described in the SCAQMD guidance on applying CalEEMod modeling results to localized impacts analysis, the equipment planned to be used on a peak day during site preparation and grading operations would disturb no more than 5 acres in a day<sup>1</sup>. Thus the 5-acre LST thresholds are appropriate for this project. Table 9 shows that the emissions of pollutants on the peak day of construction would all be less than the SCQAMD LST thresholds, which means that the resulting concentrations near the preschool to the south and nearest residences would be below the NAAQS and CAAQS concentrations.

**Table 9. Construction Localized Impacts Analysis**

Emissions Sources	NO <sub>x</sub>	CO	PM <sub>10</sub>	PM <sub>2.5</sub>
On-Site Emissions	69.66	47.68	9.78	6.37
LST Thresholds	236	2,817	21	11
Significant Emissions?	No	No	No	No

1. South Coast Air Quality Management District (SCAQMD). Fact Sheet for Applying CalEEMod to Localized Significance Thresholds. Website: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/localized-significance-thresholds/calmod-guidance.pdf>, accessed September, 2015

Based on the above, the Project would not emit substantial concentrations of these pollutants during construction and would not contribute to an existing or projected air quality violation, on a direct or cumulative basis.

#### Odors

Heavy-duty equipment in the project area during construction would emit odors, primarily from the equipment exhaust. SCAQMD Rule 402 regarding nuisance states: "A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property." The proposed uses are not anticipated to emit any objectionable odors. Therefore, objectionable odors posing a health risk to potential on-site and existing off-site uses would not occur as a result of the proposed project, and no mitigation measures are required.

#### Naturally Occurring Asbestos

The proposed project is located in Riverside County, which is not among the counties that are found to have serpentine and ultramafic rock in their soils. Therefore, the potential risk for NOA during project construction is small and less than significant.

Table 8 and 9 show that daily regional construction emissions would not exceed the daily thresholds of any criteria pollutant emission thresholds established by the SCAQMD, and during construction, there will be no locally significant impacts. Thus, no mitigation is required during project construction.

#### Long-Term Air Emission Impacts

Long-term air emission impacts are those associated with stationary sources and mobile sources involving any project-related change. The proposed project would result in both stationary and mobile source emissions. The stationary source emissions would come from natural gas consumption, landscape maintenance, and off-site electric power generation. Mobile sources from vehicular trips associated with the proposed uses emit pollutants.

The CalMEEMod Model was used to calculate the operational emissions. Mobile sources emissions were calculated based on the trip generation factors described in the Focused Traffic Impact Study (RK Engineering Group, Inc., July 11, 2016). Other emissions sources were calculated using the defaults in the CalEEMod mode for the project land use.

Long-term operational emission associated with the full proposed project of 39 homes are shown in Table 11. Table 11 shows that the long-term operational localized emissions of all criterial pollutants as a result of the proposed project would not exceed the corresponding SCAQMD daily emission thresholds. Therefore, project-related long-term air quality impacts would be less than significant.

**Table 10: Opening Year Regional Operational Emissions**

Activity	VOC	NO <sub>x</sub>	CO	SO <sub>2</sub>	PM <sub>10</sub>	PM <sub>2.5</sub>
Mobile Sources	1.72	4.32	17.21	0.04	2.34	0.68
Energy Sources	0.04	0.33	0.14	0.00	0.03	0.03
Area Sources	3.89	0.05	4.00	0.00	0.09	0.09
Total	5.65	4.69	21.35	0.04	2.45	0.79
SCAQMD Threshold	55	55	550	150	150	55
Exceeds Threshold (?)	No	No	No	No	No	No



Based on the analysis above, regional air quality impacts would be less than significant and no mitigation measures are required. With implementation of PPP 3.3-1 impacts would be further reduced to the maximum extent feasible.

### **Localized Impact Analysis**

The localized impacts analysis by design only includes on-site sources; however, the CalEEMod model outputs for operations do not separate on-site and off-site emissions. The emissions shown in Table 10 above for area sources are assumed to all occur on site and for energy sources entirely off-site. While some of the mobile-source emission will occur from vehicles driving on site, most of the mobile-source emissions calculated by the CalEEMod model would occur while the vehicles are driving off site. It is unlikely that the average on-site distance driven by vehicles will be 2,000 ft, which is approximately 4 percent of the total miles traveled. For a worst-case scenario assessment, the emissions shown in Table 11 include all on-site project-related area sources and 5 percent of the project-related new mobile sources

**Table 11: Long-Term Operational Localized Impact Analysis (lbs/day)**

LST	NOx (lbs/day)	CO (lbs/day)	PM <sub>10</sub> (lbs/day)	PM <sub>2.5</sub> (lbs/day)
On-site Emissions	0.60	5.03	0.23	0.15
SCAQMD Operational Threshold	236	2,817	6	3
Exceeds Threshold (?)	No	No	No	No

Table 11 shows that the emissions of pollutants during project operations would all be less than the SCAQMD LST thresholds, which means that the resulting concentrations at the nearest residences would be all below the NAAQS and CAAQS. Therefore, the proposed operational activity would not result in a locally significant air quality impact with mitigation.

### **Mitigation Measures:**

MM AIR-1 To be compliant with CALCEEMod modeling, the equipment planned to be used on a peak day during site preparation and grading operations will disturb no more than 5 acres in a day.

---

**3.3(c)** *Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?*

---

**Determination: Less Than Significant Impact.**

*Sources: California Emissions Estimator Model, South Coast Air Quality Management District, Air Quality Management Plan, CEQA Air Quality Handbook, Project Application Materials.*

### **Plans, Policies, or Programs (PPP)**

The following apply to the Project and would reduce impacts related to a cumulatively considerable net increase of any criteria pollutant. These measures will be included in the project's Mitigation Monitoring and Reporting Program:

- PPP 3.3-1      The Project is required to comply with the provisions of South Coast Air Quality Management District Rule 402, A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property.
- PPP 3.3-2      The Project is required to comply with Rule 403 "Fugitive Dust." Rule 403 requires implementation of best available dust control measures during construction activities that generate fugitive dust, such as earth moving and stockpiling activities, grading, and equipment travel on unpaved roads.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project related to this issue.

#### **Impact Analysis**

As discussed in Issue 3.3(b) above, the Project would not exceed the regional or localized significance thresholds for construction or operational activities. The Project would comply with South Coast Air Quality Management District Rule 402 (Nuisance) and Rule 403 (fugitive dust control) during construction, as well as all other adopted Air Quality Management Plan emissions control measures. Per South Coast Air Quality Management District rules and mandates, as well the California Environmental Quality Act requirement that impacts be mitigated to the maximum extent feasible, these same requirements would also be imposed on all projects within the South Coast Air Basin area, which would include all related projects.

Based on the analysis above impacts would be less than significant and no mitigation measures are required. With implementation of PPP 3.3-1 through PPP 3.3-2, impacts would be further reduced to the maximum extent feasible.

---

#### **3.3(d)      *Expose sensitive receptors to substantial pollutant concentrations?***

---

##### **Determination: Less Than Significant Impact.**

*Sources, South Coast Air Quality Management District, CALEEMod.*

#### **Plans, Policies, or Programs (PPP)**

The following apply to the Project and would reduce impacts related to substantial pollutant concentrations to sensitive receptors. These measures will be included in the project's Mitigation Monitoring and Reporting Program:



- PPP 3.3-1 The Project is required to comply with the provisions of South Coast Air Quality Management District Rule 402, A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property.
- PPP 3.3-2 The Project is required to comply with Rule 403 "Fugitive Dust." Rule 403 requires implementation of best available dust control measures during construction activities that generate fugitive dust, such as earth moving and stockpiling activities, grading, and equipment travel on unpaved roads.

### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project related to this issue.

### **Impact Analysis**

Sensitive receptors (i.e., children, senior citizens, and acutely or chronically ill people) are more susceptible to the effects of air pollution than the general population. Land uses that are considered sensitive receptors typically include residences, schools, playgrounds, childcare centers, hospitals, convalescent homes, and retirement homes. The residential uses adjacent to the site and pre-school to the south are considered sensitive receptors.

As indicated above under the discussion of Issue 3.3 (b)), the Project would not exceed any of the South Coast Air Quality Management District's Localized Significance Thresholds during near-term construction or long-term operation. In addition, the Project would not create a CO Hot Spot. Accordingly, Project-related localized emissions would not expose sensitive receptors to substantial pollutant concentrations during construction or long-term operation, and impacts would be less than significant. With implementation of PPP 3.3-1 through PPP 3.3-2, impacts would be further reduced to the maximum extent feasible.

---

### ***3.3 (e) Create objectionable odors affecting a substantial number of people?***

---

#### **Determination: Less Than Significant Impact.**

*Source: CEQA Air Quality Handbook, Project Application Materials.*

### **Plans, Policies, or Programs (PPP)**

The following applies to the Project and would reduce impacts related to objectionable odors. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

- PPP 3.3-1 The Project is required to comply with the provisions of South Coast Air Quality Management District Rule 402, A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health or safety of any such

persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project related to this issue.

#### **Impact Analysis**

According to the South Coast Air Quality Management District CEQA Air Quality Handbook, land uses associated with odor complaints typically include agricultural uses, wastewater treatment plants, food processing plants, chemical plants, composting, refineries, landfills, dairies, and fiberglass molding. The Project does not include any the above identified uses and therefore would not produce objectionable odors during operation.

Construction activities both onsite and offsite could produce odors from equipment exhaust, application of asphalt, and/or the application of architectural coatings. However, any odors emitted during construction would be temporary, short-term, and intermittent in nature, and would cease upon completion of construction activities.

Based on the analysis above impacts would be less than significant and no mitigation measures are required. With implementation of PPP 3.3-1, impacts would be further reduced to the maximum extent feasible.

### 3.4 BIOLOGICAL RESOURCES

<i>Would the Project:</i>	Potentially Significant Impact	Less Than Significant Impact With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?			■	
b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				■
c. Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?				■
d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?				■
e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?			■	
f. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?				■

**3.4(a)** *Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?*

**Determination: Less Than Significant**

*Source: RCA Associates LLC, General Biological Resources Assessment & Burrowing Owl Habitat Assessment, January 16, 2014, Banning General Plan.*

### Plans, Policies, or Programs (PPP)

The following applies to the Project and would reduce impacts related to impacts to candidate, sensitive, or special status species. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

PPP 3.4-1      The Project is required to pay Fish and Wildlife fees to California Department of Fish and Wildlife.

### Project Design Features (PDF)

There are no Project Design Features applicable to the Project related to this issue.

### Impact Analysis

RCA Associates LLC conducted Biological surveys on the 10 acre parcels. The purpose of the surveys was to evaluate the existing biological resources present on the site, and to conduct a habitat assessment and non-breeding survey for the burrowing owl. Based on the surveys, the project site is highly disturbed and has been disked and plowed for weed control purposes. The vegetation observed is classified as a ruderal plant community and all plants noted are those typically associated with disturbed areas and does not support any prime wildlife habitat.

No mammals or their sign were observed during the field investigations and the only mammals which may occur in adjacent areas include the California ground squirrels, cottontails, deer mice and pocket gophers. Common reptiles in the area which may inhabit adjacent areas include the western fence lizards, and western granite lizards. The only birds observed included common ravens, western meadowlarks, mourning doves and the American robin. Although suitable habitats were present on-site for the burrowing owls, no fossorial burrows were observed on the property or along the edges of the site. Neither were suitable owl burrows noted in the surrounding area based on the developed nature of the area. Based on the absence of any suitable burrows, the property does not support habitats for the burrowing owl. It is the opinion of RCA Associates LLC that the site is unlikely to support any owl populations in the future as well. Impacts would be less than significant and no mitigation is required.

---

**3.4(b)**      *Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?*

---

### Determination: No Impact.

*Source: EnGen Corp. Soils Percolation Feasibility Study, March 24, 2014, EnGen Corp. Geotechnical Engr. Study, April 4, 2014, Banning General Plan Biological Resources Element, pg. IV-30*

### Plans, Policies, or Programs (PPP)

There are no Plans, Policies, or Programs applicable to the Project related to this issue.

### Project Design Features (PDF)

There are no Project Design Features applicable to the Project related to this issue.

## Impact Analysis

The Project site is primarily covered with dry, tall grasses, with scattered low bushes. Based on soils percolation testing conducted by EnGen Corporation, groundwater was not encountered to the maximum depth explored (50.5 feet) in all exploratory boring locations. No evidence of historical high groundwater conditions was observed. Consequently, groundwater is not anticipated to rise within 100 feet from surface elevation at the subject site (EnGen Geotechnical Eng. Study, pg. 11). The Banning General Plan Biological Resources Element cites that there are seven natural communities represented in the Banning General Plan planning area. The two habitats associated with riparian habitats include the Riparian Scrub and Meadows and Marshes. The Riparian Scrub is a water-dependent plant supported primary by watercourse that flow through the planning area. Secondly, Meadows and Marshes encompasses a wetland community. It is unlikely given the depth of groundwater at the project site that any affects associated with the project will affect such habitats. Moreover, Riparian Scrub was found existing in the channels of the San Gorgonio River, Smith Creek and Mias Canyon, while Meadows and Marshes was at one time located in the uppermost reaches of Banning Canyon.

Given the absence of any riparian habitat or other sensitive natural habitat, the project is not anticipated to have any impacts upon these environments. No Impacts are anticipated to occur therefore no mitigation measures are proposed as a consequence of the development.

---

**3.4(c)**      *Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?*

---

**Determination: No Impact.**

*Source: Banning General Plan Biological Resources Element, pg. IV-30*

## Plans, Policies, or Programs (PPP)

There are no Plans, Policies, or Programs applicable to the Project related to this issue.

## Project Design Features (PDF)

There are no Project Design Features applicable to the Project related to this issue.

## Impact Analysis

As cited in 3.4 (b) given the absence of any riparian habitat or other sensitive natural wetland habitat, the project is not anticipated to have any impacts upon these environments or other federally protected wetland sensitive habitat. No Impacts are anticipated to occur and no mitigation measures are proposed as a consequence of the development.



---

**3.4(d) *Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?***

---

**Determination: No Impact.**

*Source: Banning General Plan Biological Resources Element, pg. IV-30*

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project related to this issue.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project related to this issue.

**Impact Analysis**

The Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) sets forth three primary objects which are 1) impose a habitat mitigation fee on discretionary development in western Riverside County; 2) designate criteria areas for acquisition or as subject to special development criteria; 3) cooperate with state and federal land management agencies for conservation and unification of habitat lands. There are three features of the MSHCP that apply within the Banning planning area. These are criteria areas, special linkage areas, and special survey areas.

Criteria Areas. There is one criteria area "cell" in the Banning Planning Area. This cell is located along the City's western border with unincorporated Riverside County and just south of the San Bernardino County line, in the northeast quarter section. This cell is approximately 160 acres, a portion which occurs in the City limits. Pursuant to the MSHCP, conservation in this Cell focuses on chaparral and woodlands and forests. This cell however is not located near the project area and as such will not be affected by the development.

Special linkage Area. A three-quarter mile MSHCP special linkage area occurs in the easterly planning area, adjacent to the eastern City limits where the San Geronio River exits the City. For special linkage areas, the MSHCP requires local jurisdictions to assure preservation of a wildlife movement corridor in compliance with guidelines set forth in the South Coast Wildlands 'Missing Linkages project. However, the South Coast Wildlands' document makes no reference to the San Geronio River linkage. In the absence of other guidance, in the MSHCP, the City will apply standards set forth in the CEQA Guidelines for projects within the Special Linkage area. The General Biological Resources Assessment & Burrowing Owl Habitat Assessment prepared by RCA Associates LLC, pg. 2 cites that the project is not located within any designated critical area or cell or cell grouping. This is consistent with the Banning General Plan MSCHP Special Linkage and Criteria Area map that shows no such special habitat or linkage that affects the project site. In that no impacts to the MSHCP in Banning will occur from the project, no impacts are anticipated.

---

**3.4(e) *Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?***

---

### **Determination: Less Than Significant Impact**

*Source: Banning General Plan Biological Resources Element, pg. IV-30,*

### **Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

### **Impact Analysis**

The Project site is primarily covered with dry, tall grasses, with scattered low bushes. No sporadic ornamental plant and tree species was found on site.

The City of Banning's General Plan Biological Resources Element includes provisions to provide for the preservation and protection of the natural environment and many biological resources. Biological resources represent the plants and wildlife species and ecosystems and habitats that contribute to the area's natural setting. As set forth in Government Code Section 65302(d), the City is required to include an element that provides for the conservation and preservation of wildlife resources. Wildlife common to suburban areas was observed using the site in the field survey investigation conducted by RCA Associates staff on January 2, 2014. Other wildlife observed on the site and those species expected to occur in surrounding area are cited below:

- Common raven
- Mourning dove
- Song sparrow
- Side-blotched lizard
- Western whiptail lizard
- Desert spiny lizard
- California ground squirrel
- Coyotes
- Desert cottontail
- Deer Mice
- Wester harvest mouse
- Pocket mouse

As previously cited, no mammals or their sign were observed during the investigations and the only mammals that may occur in adjacent areas include species that were not endangered or at risk, such as the California ground squirrels, deer mice, pocket gophers western fence lizards and the common raven

As previously cited, the project site is not located within a Multiple Species Habitat Conservation Plan (MSHCP) or within a Criteria Area or adjacent to a Criteria Area or Conservation Area. Thus the project is not subject to the Urban/Wildlands Interface Guidelines. No impacts are anticipated to arise as a result of the project.



---

**3.4(f)      *Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?***

---

**Determination: No Impact**

*Source: Banning General Plan Biological Resources Element, pg. IV-30,*

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project related to this issue.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

Based on the General Biological Resources Assessment & Burrowing Owl Habitat Assessment prepared by RCA Associates LLC, dated January 16, 2014, pg. 7 the following are the biological findings:

- **General Vegetation and Wildlife.** Future development activities on the property would generate some impacts to the general biological resources which occurred on the site. However, the site has been significantly disturbed by past human activities; consequently the site supports limited vegetation. Loss of the existing ruderal vegetation would affect some wildlife species; although the number of species that would be impact is limited. Direct impacts would include an increase in mortality for less mobile species (e.g., rodents, etc.) and displacement of mobile species, (primarily birds) into adjacent habitats. The number of wildlife species that would be displaced is very low and a significant increase in overall mortality is unlikely. Indirect impacts would include an increase in disturbance of daily and seasonal behavior of some species in the area due to increased noise levels during development activities.
- **Threatened, Endangered and Species of Special Concern.** The site does not support any populations of listed plant or animal species, and there are no know populations of any sensitive species in the immediate area. No burrowing owls or any owl signs were observed on the site during the field investigations conducted by RCA Associates on January 2, 2014. Future development activities are not expected to generate any impacts to burrowing owls or any other sensitive species, nor will any listed species be impacted. Development activities will not impact any riparian/riverine/vernal pool plant species, vernal pools, or narrow endemic plant species. Future development of the site is not expected to generate significant impacts to any biological resources.
- **Habitat Fragmentation and Wildlife Movement.** The property is located in an area where habitat has been significantly fragmented due to past development activities, and the incremental loss of wildlife habitat is expected to be very minimal. There are no wildlife corridors present on the site or in adjacent areas, and the proposed project will not impede regional wildlife movement or impact any MSHCP-designated corridors or habitat linkages.

Therefore the future site development will not have substantial impacts with regard to habitat fragmentation and regional wildlife movement.

- Critical and Sensitive Habitat. Future development will not have any impact on any critical or sensitive habitats.
- Jurisdictional Waters. Future development activities will not impact any jurisdictional waters either on the site or in adjacent areas.
- Application of CEQA Guidelines – Section 15370.
  - Avoidance of Impacts: Development will not generate any significant impacts to biological resources.
  - Minimization of Impacts: Future development of the site will not impact any sensitive plant community.
  - Rectifying Impacts: No mitigation will be required based on the results of the January 2014 field investigations.
  - Impacts:

No impacts to biological resources will result from the project and no mitigation measures are required.

### 3.5 CULTURAL RESOURCES

<i>Would the Project:</i>	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Cause a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines §15064.5?				■
b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines §15064.5?				■
c. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?				■
d. Disturb any human remains, including those interred outside of formal cemeteries?				■

#### **3.5(a) Cause a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines § 15064.5?**

**Determination: No Impact.**

*Source: City of Banning General Plan, BCR Consulting, LLC, Cultural Resources Assessment, May 1, 2017*

#### **Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

Historic resources generally consist of buildings, structures, improvements, and remnants associated with a significant historic event or person(s) and/or have a historically significant style, design, or achievement. Damaging or demolition of historic resources is typically considered to be a significant impact. Impacts to historic resources can occur through direct impacts, such as destruction or removal, and indirect impacts, such as a change in the setting of a historic resource.

CEQA Guidelines §15064.5(a) clarifies that historical resources include the following:

- 1. A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources.*
- 2. A resource included in a local register of historical resources, as defined in section 5020.1(k) of the Public Resources Code or identified as significant in an historical resource survey meeting the requirements [of] section 5024.1(g) of the Public Resources Code.*

*3. Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California.*

The majority of the site is covered by disturbed, ruderal vegetation. Sporadic ornamental plant and tree species were also found on site. Given the current conditions of the site, it does not appear that any surface cultural resources are present on the site. In addition, the site also does not appear on the Riverside County Historic Resources Survey Architectural Survey Forms provided by the Riverside County Parks Department. Moreover, in accordance with AB 52, the respective Indian Tribes were notified of the proposed subdivision. The City did receive comments and consulted with The Morongo Band of Mission Indians, Agua Caliente Band of Cahuilla Indians and Soboba Band of Luiseño Indians. Agua Caliente Band of Cahuilla Indians requested a records search and physical survey of the site. A full report has been prepared, both record search and physical survey by BCR Consulting, LLC, May 1, 2017.

As stated above, a Cultural Resources records search and field survey were conducted for the project by, BCR Consulting, LLC, May 1, 2017. The records search revealed that 14 cultural resource studies have taken place resulting in the recording of 105 cultural resources within one-mile of the project site. Of these resources, 104 were historic-period and one was a prehistoric archaeological site. The nearest historic-period resource was a single-family residence adjacent to the northwest of the project site. The only prehistoric resource in the records search radius was a prehistoric habitation site (designated P-33-99) located approximately ½ mile to the northwest of the project site. Of the 14 previous studies, none has assessed the project site. No cultural resources have been previously recorded within its boundaries.

During the field survey, BCR Consulting archaeologists did not discover any cultural resources (including prehistoric or historic-period archaeological sites or historic-period buildings) within the project site boundaries. Based on these results, BCR Consulting recommends a finding of no impacts to historical resources under CEQA. BCR Consulting also recommends that no additional cultural resources work or monitoring is necessary during proposed activities associated with the development of the project site. However, if previously undocumented cultural resources are identified during earthmoving activities, a qualified archaeologist should be contacted to assess the nature and significance of the find, diverting construction excavation if necessary. The City of Banning standard conditions of approval for the project address the discovery of Cultural Resources.

Therefore, there will be no impact to historical resources as a result of the Project and no mitigation measures are required. Tribal Cultural Resources are assessed in section 3.17 where mitigation measures are proposed for the project.

---

**3.5(b)      *Cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines § 15064.5?***

---

**Determination: No Impact.**

*Source: City of Banning General Plan*

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

Archaeological sites are locations that contain resources associated with former human activities, and may contain such resources as human skeletal remains, waste from tool manufacture, tool concentrations, and/or discoloration or accumulation of soil or food remains.

As stated in 3.5 (a) above, there will be no impact to an archaeological resource as a result of the Project and no mitigation measures are required.

---

#### **3.5(c) *Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?***

---

##### **Determination: No Impact.**

*Sources: City of Banning General Plan*

#### **Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

Paleontological resources are the preserved fossilized remains of plants and animals. Fossils and traces of fossils are preserved in sedimentary rock units, particularly fine- to medium grained marine, lake, and stream deposits, such as limestone, siltstone, sandstone, or shale, and in ancient soils. They are also found in coarse-grained sediments, such as conglomerates or coarse alluvium sediments. Fossils are rarely preserved in igneous or metamorphic rock units. Fossils may occur throughout a sedimentary unit and, in fact, are more likely to be preserved subsurface, where they have not been damaged or destroyed by previous ground disturbance, amateur collecting, or natural causes such as erosion.

The Project site has been disturbed and the potential for paleontological resources to be present at the Project site is considered low. Therefore; there will be no impact to a paleontological resource or site and no mitigation is required.

---

#### **3.5(d) *Disturb any human remains, including those interred outside of formal cemeteries?***

---

##### **Determination: No Impact.**



*Sources: California Health and Safety Code §7050.5, Public Resources Code §5097 et. seq.*

### **Plans, Policies, or Programs (PPP)**

The following applies to the Project and would reduce impacts relating to disturbing human remains. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

- PPP 3.5-1      The project is required to comply with the applicable provisions of California Health and Safety Code §7050.5, Public Resources Code §5097 et. seq., and provisions of AB 52 concerning consideration of Tribal Cultural Values in determination of project impacts and mitigation.

### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

### **Impact Analysis**

The Project site does not contain a cemetery and no known formal cemeteries are located within the immediate site vicinity. As noted in the response to Issue 3.5 (a) above, the Project site has been disturbed and the potential for uncovering human remains at the Project site is considered low. Nevertheless, the remote potential exists that human remains may be unearthed during grading and excavation activities associated with Project construction.

In the event that human remains are discovered during Project grading or other ground disturbing activities, the Project would be required to comply with the applicable provisions of California Health and Safety Code §7050.5 as well as Public Resources Code §5097 et. seq. California Health and Safety Code Section 7050.5 states that no further disturbance shall occur until the County Coroner has made the necessary findings as to origin. Pursuant to California Public Resources Code Section 5097.98(b), remains shall be left in place and free from disturbance until a final decision as to the treatment and disposition has been made by the Coroner.

If the Coroner determines the remains to be Native American, the California Native American Heritage Commission (NAHC) must be contacted and the NAHC must then immediately notify the "most likely descendant(s)" of receiving notification of the discovery. The most likely descendant(s) shall then make recommendations within 48 hours, and engage in consultations concerning the treatment of the remains as provided in Public Resources Code Section 5097.98.

Based on the analysis above, with implementation of PPP 3.5-1, there will be no impacts and no mitigation measures are required.

### 3.6 GEOLOGY AND SOILS

<i>Would the Project:</i>	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
1) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.			■	
2) Strong seismic ground shaking?			■	
3) Seismic-related ground failure, including liquefaction?			■	
4) Landslides?			■	
b. Result in substantial soil erosion or the loss of topsoil?		■		
c. Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the Project, and potentially result in on-site or offsite landslide, lateral spreading, subsidence, liquefaction or collapse?		■		
d. Be located on expansive soil, as defined in the Uniform Building Code, creating substantial risks to life or property?		■		
e. Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?				■

**3.6 (a) (1)** *Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.*

**Determination: Less Than Significant Impact**

*Source: EnGen Corp., Geotechnical Engineering Study, TT 36710, April 4, 2014, Banning General Plan*

**Plans, Policies, or Programs (PPP)**



There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

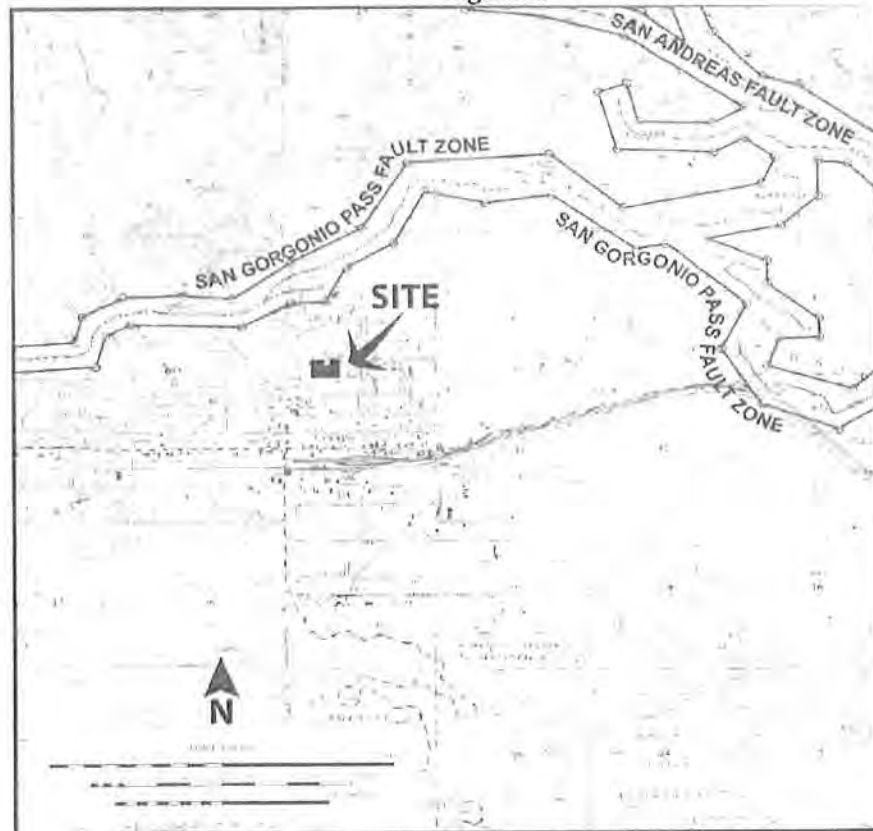
### Project Design Features (PDF)

There are no Design Features relating to this issue.

### Impact Analysis

A geotechnical engineering study of the subsurface conditions of the subject site was performed on January 15<sup>th</sup> and 20<sup>th</sup>, 2014 by EnGen Corporation. Six exploratory borings were advanced and six exploratory backhoe test pits were excavated across the subject property. The results of the surface and subsurface investigations determined that the site is not located within and Alquist-Priolo Earthquake Fault Zone. No known active faults traverse the property. The closest mapped fault to the subject property is the San Gorgonio Pass Fault which is located approximate ½ mile north of the subject site as shown in Figure 3. The San Bernardino branch of the San Andreas Fault is located approximately 2 ¾ mile north northeast of the subject site.

Figure 3



Consequently, in light of the EnGen geotechnical findings, impacts will be less than significant and no and no mitigation is required.

---

**3.6 (a) (2) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving: Strong seismic ground shaking?**

---

**Determination: Less Than Significant Impact**

*Source: EnGen Corp., Geotechnical Engineering Study, TT 36710, April 4, 2014, Banning General Plan*

**Plans, Policies, or Programs (PPP)**

The following apply to the Project and would reduce impacts relating to seismic ground shaking. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

- PPP 3.6 -1 The project is required to comply with the California Building Standards Code and City Building Code to preclude significant adverse effects associated with seismic hazards.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

The EnGen Corporation Geotechnical Engineering Study, dated April 4, 2014 reports that the subject site is located within a seismically active region near the active margin between the North American and Pacific tectonic plates. The city of Banning lies within the Transverse Ranges geomorphic province, while the southern edge of Banning area is located within the Peninsular Ranges geomorphic province with the San Geronio Pass defining the boundary between the two regions. The primary seismic risk at the project site is a potential earthquake along the San Andreas Fault. Impacts associated with seismic ground shaking will be less than significant in that the project is subject to review and approval by the Banning Building and Safety Division. Housing units shall be constructed in accordance with the California Building Codes.

Pursuant to PPP 3.6-1, impacts associated with seismic ground shaking will be less than significant and no mitigation is required.

---

**3.6 (a) (3) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving: Seismic-related ground failure, including liquefaction?**

---

**Determination: Less Than Significant Impact.**

*Source: EnGen Corp., Geotechnical Engineering Study, TT 36710, April 4, 2014, EnGen Soils Percolation Feasibility Study, March 24, 2014, Banning General Plan*

**Plans, Policies, or Programs (PPP)**

The following apply to the Project and would reduce impacts relating to seismic ground shaking. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

- PPP 3.6-1 The project is required to comply with the California Building Standards Code and City Building Code to preclude significant adverse effects associated with seismic hazards.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

Liquefaction is a phenomenon in which loose, saturated, relatively cohesion-less soil deposits lose shear strength during strong ground motions. The factors controlling liquefaction are:

- Seismic ground shaking of relatively loose, granular soils that are saturated or submerged can cause soils to liquefy and temporarily behave as a dense fluid. For liquefaction to occur, the following conditions have to occur: Intense seismic shaking;
- Presence of loose granular soils prone to liquefaction; and
- Saturation of soils due to shallow groundwater.

According to the EnGEN Corp. Geotechnical Engineering Study dated April 4, 2014, the project site is not situated within a known liquefaction hazard area as the depth to groundwater at the site is in excess of 400 feet below existing ground surface which renders the site considerably less susceptible to liquefaction. The EnGEN Soils Percolation Feasibility Study, dated March 24, 2014, moreover cites that no evidence of historical high groundwater conditions was observed during boring tests (EnGEN Corp. Soils Percolation Feasibility Study, March 24, 2014, pg. 2).

Consequently, the potential for soil liquefaction at the site appears unlikely and no significant impacts are anticipated as a result of liquefaction. No mitigation is required.

---

#### ***3.6 (a) (4) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving: Landslides?***

---

**Determination: No Impact.**

*Source: EnGen Corp., Geotechnical Engineering Study, TT 36710, April 4, 2014, Banning General Plan*

#### **Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

Generally, a landslide is defined as the downward and outward movement of loosened rock or earth down a hillside or slope. Landslides can occur either very suddenly or slowly, and frequently accompany other natural hazards such as earthquakes, floods, or wildfires. Landslides can also be

induced by the undercutting of slopes during construction, improper artificial compaction, or saturation from sprinkler systems or broken water pipes.

Due to the flat gradient of the site, the massive nature of subsurface soils, the strength of these soils and the absence of known landslides within or immediately adjacent to the site, the potential for land-sliding at the site was judged to be low. Based on the EnGen Corp. Geotechnical Engineering Study dated April 4, 2014, with implementation of PPP 3.6-1, impacts would be less than significant and no mitigation measures are required.

---

### **3.6(b) Result in substantial soil erosion or the loss of topsoil?**

---

#### **Determination: Less than Significant with Mitigation**

*Sources: Project Application Materials, EnGen Corp., Geotechnical Engineering Study, TT 36710, April 4, 2014, Banning General Plan*

#### **Plans, Policies, or Programs (PPP)**

The following applies to the Project and would reduce impacts related to soil erosion. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

PPP 3.6-2 Prior to grading permit issuance, the Project Proponent shall prepare a *Stormwater Pollution Prevention Plan*. Project contractors shall be required to ensure compliance with the Stormwater Pollution Prevention Plan and permit periodic inspection of the construction site by City of Banning staff and the state water resources control board staff.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

Soils in the project area have already been disturbed by previous activities. Therefore, the loss of topsoil is not a potential impact. Construction activities may nevertheless cause soil erosion if the sites are not properly designed. The potential of soil erosion would be minimized through implementation of the EnGEN Corp. Geotechnical Engineering Study, dated April 4, 2014 recommendations for earthwork and grading. Moreover, the applicant is required to prepare a Stormwater Pollution Prevention Plan (SWPPP) in compliance with the requirements of the National Pollutant Discharge Elimination System (NPDES) General Contract Permit. The SWPPP would also prescribe temporary Best Management Practices (BMP's) to control wind and water erosion during and shortly after construction of the project. With implementation of the recommendation cited in the EnGEN Corp. Geotechnical Engineering Study, in conjunction with NPDES requirements, impacts arising from the project will be less than significant with mitigation.

#### **Mitigation Measure:**

*Source: EnGEN Corp. Geotechnical Engineering Study, TTM 36710, April 4, 2014*

- MM- GEO -1 Developer shall adhere to the recommendations cited in the EnGEN Corp Geotechnical Engineering Study with regard to the project's development per Section 8.0.

---

**3.6(c)** *Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the Project, and potentially result in on-or offsite landslide, lateral spreading, subsidence, liquefaction or collapse?*

---

**Determination: Less Than Significant Impact with Mitigation**

*Source: Project Application Materials, EnGen Corp., Geotechnical Engineering Study, TT 36710, April 4, 2014, Banning General Plan*

**Plans, Policies, or Programs (PPP)**

The following apply to the Project and would reduce impacts relating to an unstable geologic unit. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

- PPP 3.6-1 The project is required to comply with the California Building Standards Code and City Building Code to preclude significant adverse effects associated with seismic hazards.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

The Project site is flat and gently sloping and contains no substantial natural or man-made slopes. There is no evidence of on-site landslides on or near the Project site, nor are there any exposed boulders that could result in rock fall hazards. As such, there will no impacts associated with landslides and rock fall hazards.

Based on the EnGen Corp., Geotechnical Engineering Study, TT 36710, April 4, 2014, Soil classification and expansion index indicates that near surface soils have a very low expansion potential. Ultimately, based on the EnGen field and laboratory data and engineering analysis performed, the project is feasible from a geotechnical engineering standpoint.

With the project recommended mitigation MM GEO-1 as cited in the EnGen report, impacts will be less than significant.

---

**3.6(d)** *Be located on expansive soil, as defined in the Uniform Building Code, creating substantial risks to life or property?*

---

**Determination: Less than Significant Impact with Mitigation**

*Source: Project Application Materials, EnGen Corp., Geotechnical Engineering Study, TT 36710, April 4, 2014, Banning General Plan*

**Plans, Policies, or Programs (PPP)**



The following apply to the Project and would reduce impacts relating to expansive soils. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

- PPP 3.6-1      The project is required to comply with the California Building Standards Code and City Building Code to preclude significant adverse effects associated with seismic hazards.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

Expansive soils are those that undergo volume changes as moisture content fluctuates; swelling substantially when wet or shrinking when dry. Soil expansion can damage structures by cracking foundations, causing settlement and distorting structural elements. The following mitigation will reduce impacts to less than significant.

With implementation of MM GEO-1, impacts associated with expansive soils will be less than significant.

- 
- 3.6(e)**      *Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?*
- 

#### **Determination: No Impact.**

*Source: Application Materials, EnGen Corp., Geotechnical Engineering Study, TT 36710, April 4, 2014, Banning General Plan*

#### **Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, Programs, or Standard Conditions applicable to the Project relating to this issue.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

The Project does not propose the use of septic tanks or alternative waste water disposal systems. The Project would install domestic sewer infrastructure and connect to the City of Banning Sewer District's existing sewer conveyance and treatment system. As such, there are no impacts and no mitigation measures are required.

### 3.7 GREENHOUSE GAS EMISSIONS

<i>Would the Project:</i>	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?			■	
b. Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?			■	

#### **3.7(a) *Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?***

**Determination: Less Than Significant Impact.**

*Source: RK Engineering Group, Inc., Air Quality and Climate Change Study, TTM 36710, May 31, 2016*

#### **Plans, Policies, or Programs (PPP)**

The following apply to the Project and would reduce impacts relating to greenhouse gas emissions. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

- PPP 3.7-1 Prior to issuance of the first residential building permit, the Project Applicant shall submit energy usage calculations in the form of a Title 24 Compliance Report to the City of Banning Building & Safety Department showing that the Project will be constructed in compliance with the most recently adopted edition of the applicable California Building Code Title 24 requirements.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

**Greenhouse Gases (GHGs):** Gases that trap heat in the atmosphere are commonly referred to as "greenhouse gases," because they function like a greenhouse by letting light in while preventing heat from escaping. Naturally occurring GHGs include water vapor, carbon dioxide (CO<sub>2</sub>) methane (CH<sub>4</sub>) and nitrogen dioxide/oxides (N<sub>2</sub>O and NO<sub>x</sub>). The natural accumulation of GHGs in the atmosphere has a warming effect on the Earth's temperature. Without these natural GHGs, the Earth's temperature would be cooler.

In addition to the naturally occurring gases, man-made chemicals also act as GHGs and include the following common compounds: chlorofluorocarbons (CFCs), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF<sub>6</sub>), ozone (O<sub>3</sub>), and aerosols. It is believed that emissions from human activities, such as electricity production and vehicle use, have elevated the



concentration of these gases in the atmosphere beyond the level of naturally occurring concentrations.

Individual greenhouse gas compounds have varying global warming potential and atmospheric lifetimes. Carbon dioxide (CO<sub>2</sub>), the reference gas for global warming potential, has a global warming potential of one. The global warming potential of a greenhouse gas is a measure of how much a given mass of a greenhouse gas is estimated to contribute to global warming. To describe how much global warming a given type and amount of greenhouse gas may cause, the carbon dioxide equivalent (CO<sub>2</sub> e) is used. The calculation of the carbon dioxide equivalent is a consistent methodology for comparing greenhouse gas emissions since it normalizes various greenhouse gas emissions to a consistent reference gas, carbon dioxide. For example, methane's warming potential of 21 indicates that methane has 21 times greater warming affect than carbon dioxide on a molecule per molecule basis. A carbon dioxide equivalent is the mass emissions of an individual greenhouse gas multiplied by its global warming potential. Greenhouse gases defined by AB 32 include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

This analysis is restricted to greenhouse gases identified by AB 32 and the CEQA Guidelines (section 15364.5), which include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. The project would generate a variety of greenhouse gases during construction and operation, including several defined by AB 32 and the CEQA Guidelines such as carbon dioxide, methane and nitrous oxide.

#### Construction Greenhouse Gas Emissions Impact

CalEEMod was used to estimate onsite and offsite emissions. Greenhouse gas emissions from project construction equipment and worker vehicle emissions are shown below in Table 12. The emissions are from all phases of construction. The total construction emissions amortized over a period of 30 years are estimated at 19.08 metric tons of CO<sub>2</sub>e per year.

**Table 12. Construction Greenhouse Gas Emissions**

Activity	Emissions (MTCO <sub>2</sub> e)		
	Onsite	Offsite	TOTAL
Site Preparation	18.27	0.63	18.90
Grading	86.46	2.08	88.54
Building Construction	359.71	80.47	440.18
Paving	20.50	1.00	21.50
Coating	2.56	0.60	3.16
TOTAL	487.50	84.78	572.28
Averaged over 30 years	16.25	2.83	19.08

#### Operational Greenhouse Gas Emissions Impact

Operational or long-term emissions occur over the life of the project. The operational emissions for the project are 800.19 metric tons of CO<sub>2</sub>e per year as shown in Table 13 below. The operational emissions refer to emissions with the incorporation of regulations that would further reduce emissions.

Table 13. Project Greenhouse Gas Emissions During Operation

Emissions Source	Emissions (MTCO <sub>2</sub> e) with Regulation
Mobile Source	452.91
Energy Source	231.62
Area Source	38.63
Water	32.40
Waste	25.55
Subtotal (operational)	781.11
Subtotal Construction (averaged over 30 years)	19.08
Total Annual Emissions	800.19

The project's operational GHG emissions are below the SCAQMD's significance threshold. Therefore, the project will not result in significant construction emissions (see table 14 below).

Table 14. Significance of Greenhouse Gases

Item	Emissions with Regulation	Units
Total Annual Emissions	800	MTCO <sub>2</sub> e/year
SCAQMD Draft Tier 3/CAP Threshold	3,000	MTCO <sub>2</sub> e/year
Exceed Tier 3 Threshold?	No	
Significant impact?	No	

Because climate change impacts are cumulative in nature, no typical single project can result in emissions of such a magnitude that it, in and of itself, would be significant on a project basis. The project's operational emissions of 2,000 MT/yr of CO<sub>2</sub>e are less than the SCAQMD-recommended interim threshold of 3,500 MT/yr of CO<sub>2</sub>e for residential uses. Therefore, the proposed project would not result in a significant impact on GHG emissions.

#### CO Hot Spot Analysis

Given the relatively low level of CO concentrations in the project area, project-related vehicles are not expected to result in the CO concentrations exceeding the State or federal CO standards. Because no CO hot spot would occur, there would be no project-related impacts on CO concentrations.

The project would generate direct and indirect greenhouse gas emissions; however, these emissions would not result in a significant impact on the environment. As such, impacts are less than significant and no mitigation measures are required.

---

#### **3.7(b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?**

---

**Determination: Less Than Significant Impact.**

*Source: RK Engineering Group, Inc., Air Quality and Climate Change Study, TTM 36710, May 31, 2016*

#### **Plans, Policies, or Programs (PPP)**

There are no Plans, Policies or Programs related to this issue.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

The project would not conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases. As such, impacts are less than significant and no mitigation measures are required.

Based on the analysis above, with implementation of PPP 3.7-1, impacts would be less than significant.

### 3.8 HAZARDS AND HAZARDOUS MATERIALS

<i>Would the Project:</i>	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?				■
b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?			■	
c. Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?				■
d. Be located on a site, which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5, and, as a result, would it create a significant hazard to the public or the environment?				■
e. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the Project result in a safety hazard for people residing or working in the Project area?			■	
f. For a project within the vicinity of a private airstrip, would the Project result in a safety hazard for people residing or working in the Project area?			■	
g. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?			■	
h. Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?			■	

#### 3.8(a) *Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?*

#### Determination: No Impact

Source: City of Banning General Plan, Hazardous and Toxic Materials Element.

#### Plans, Policies, or Programs (PPP)

The transport, use or disposal of hazardous materials in the unlikely event these materials are uncovered shall adhere to the regulations pertaining regulating the handling and transport of these items. The following PPP applies to the Project and would reduce impacts relating to this issue. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

PPP 3.8-1 The Project is subject all applicable federal, state, and local laws and regulations regarding hazardous materials, including but not limited requirements imposed by the Environmental Protection Agency, California Department of Toxic Substances Control, South Coast Air Quality Management District, and the Santa Ana Regional Water Quality Control Board.

### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

### **Impact Analysis**

#### **Existing Site Conditions**

The construction of single family homes on the proposed project site will not result in significant impacts associated with hazardous materials. The City implements the standards of the Household Hazardous Waste programs through its waste provider. These regulations and standards ensure that impacts to surrounding areas, or within the project itself, are less than significant. No Mitigation Measures are proposed

#### **Operational Activities**

The Project site would be developed with residential land uses which are land uses not typically associated with the transport, use, or disposal of hazardous materials. Although residential land uses may utilize household products that contain toxic substances, such as cleansers, paints, adhesives, and solvents, these products are usually in low concentration and small in amount and would not pose a significant risk to humans or the environment during transport to/from or use at the Project site. No mitigation measures are proposed and no impacts will result.

---

***3.8(b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?***

---

### **Determination: Less than Significant**

Sources: City of Banning General Plan, Hazardous and Toxic Materials Element.

### **Plans, Policies, or Programs (PPP)**

There are numerous regulations pertaining to the accidental release of hazardous materials. The following PPP applies to the Project and would reduce impacts relating to this issue. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

PPP 3.8-1 The Project is subject all applicable federal, state, and local laws and regulations regarding hazardous materials, including but not limited requirements imposed by the Environmental Protection Agency, California Department of Toxic Substances Control, South Coast Air Quality Management District, and the Santa Ana Regional Water Quality Control Board.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

Accidents involving hazardous materials that could pose a significant hazard to the public or the environment would be highly unlikely during the construction and long-term operation of the Project and are not reasonably foreseeable. The transport, use and handling of hazardous materials on the Project site during construction is a standard risk on all construction sites, and there would be no greater risk for upset and accidents than would occur on any other similar construction site.

Upon build-out, the Project site would operate as a residential community, which is a land use type not typically associated with the transport, use, or disposal of hazardous materials that could be subject to upset or accident involving the release of hazardous materials into the environment.

Based on the analysis above, with implementation of PPP 3.8-1, impacts would be less than significant and no mitigation measures are required.

---

***3.8(c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?***

---

#### **Determination: No Impact**

*Sources: Project Application Materials, Google Earth.*

#### **Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

The project site is a proposed residentially subdivision. The future occupants of the single-family subdivision would not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances or waste within one-quarter mile of an existing school because the residential project does not propose the use of hazardous materials. There would be no impact related to hazardous emissions or the handling of hazardous materials near schools resulting from implementation of the project



---

**3.8(d) *Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?***

---

**Determination: No Impact.**

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

The Project site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5. No impact would occur and no mitigation measures are required.

---

**3.8(e) *For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the Project result in a safety hazard for people residing or working in the Project area?***

---

**Determination: Less Than Significant Impact.**

*Source: Riverside County Airport Land Use Commission response, December 16, 2016.*

**Plans, Policies, or Programs (PPP)**

**Project Design Features (PDF)**

PDF 3.8-1      The Applicant is proposing a Tentative Tract Map (TTM) to permit a housing density of 3.8 dwelling units per acre.

**Impact Analysis**

The project is located within Zone D of the Banning Municipal Airport Influence Area. The Riverside County Airport Land Use Compatibility (RCALUC) Plan assigns various zones which either prohibit, control or guide development within each district's airport influence area. Each specific alpha character, with Zone "A" being most restrictive based on safety and airspace protection factors and concerns to "E", less restrictive incorporate site specific density provisions for housing development and other uses. Zone D as noted in Figure 4 is classified as a "Primary Traffic Pattern and Runway Buffer Area". Table 3A of the RCALUC cites Zone D Risk Level as "Low". The table indicates that 20% to 30% of general aviation accidents take place in this zone. However, the large area encompassed by this district as noted in Figure 5 means a low likelihood of accident occurrence in any given location. The primary concern is with uses for which potential consequences are severe, such as with very-high intensity level development in a confined area and noise impacts. For project's located within an airport influence area, the Riverside County Airport



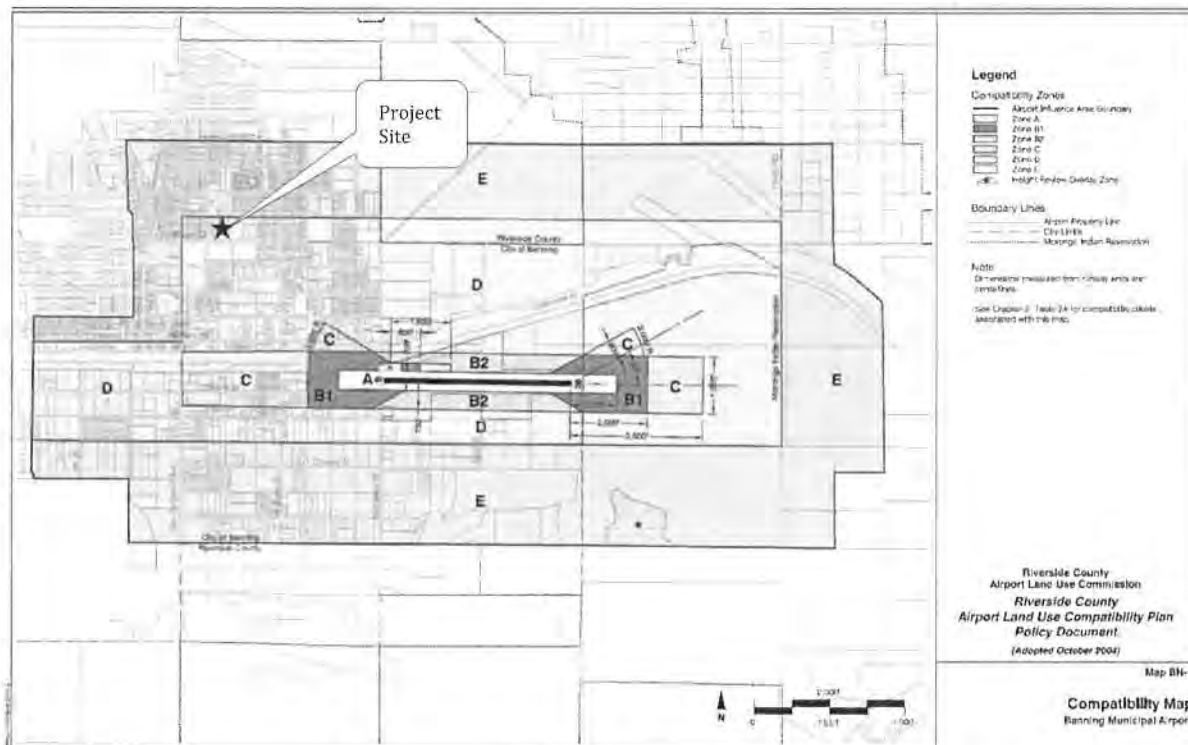
Land Use Commission (ALUC) is responsible for reviewing the plans, regulations and land use actions of local agencies for consistency with the RCALUC. ALUC's have no authority over existing land uses. The authority of the ALUC extends only to land in the vicinity of airports that is "not already devoted to incompatible uses".

Figure 4

CHAPTER 2 COUNTYWIDE POLICIES									
Zone	Locations	Maximum Densities / Intensities					Additional Criteria		
		Residential (d.u./ac) <sup>1</sup>	Other Uses (people/ac) <sup>2</sup>			Req'd Open Land <sup>3</sup>	Prohibited Uses <sup>4</sup>	Other Development Conditions <sup>5</sup>	
			Aver. Single Acre <sup>6</sup>	with Bonus <sup>7</sup>					
<b>A</b>	Runway Protection Zone and within Building Restriction Line	0	0	0	0	All Remaining	<ul style="list-style-type: none"> <li>All structures except ones with location set by aeronautical function</li> <li>Assemblages of people</li> <li>Objects exceeding FAR Part 77 height limits</li> <li>Storage of hazardous materials</li> <li>Hazards to flight <sup>8</sup></li> </ul>	<ul style="list-style-type: none"> <li>Aviation easement dedication</li> </ul>	
<b>B1</b>	Inner Approach/Departure Zone	0.05 (average parcel size $\geq 20.0$ ac.)	25	50	65	30%	<ul style="list-style-type: none"> <li>Children's schools, day care centers, libraries</li> <li>Hospitals, nursing homes</li> <li>Places of worship</li> <li>Bldgs with <math>&gt; 2</math> aboveground habitable floors</li> <li>Highly noise-sensitive outdoor nonresidential uses <sup>10</sup></li> <li>Aboveground bulk storage of hazardous materials <sup>11</sup></li> <li>Critical community infrastructure facilities <sup>12</sup></li> <li>Hazards to flight <sup>8</sup></li> </ul>	<ul style="list-style-type: none"> <li>Locate structures maximum distance from extended runway centerline</li> <li>Minimum NLR of 25 dB in residences (including mobile homes) and office buildings <sup>13</sup></li> <li>Airspace review required for objects <math>&gt; 35</math> feet tall <sup>14</sup></li> <li>Aviation easement dedication</li> </ul>	
<b>B2</b>	Adjacent to Runway	0.1 (average parcel size $\geq 10.0$ ac.)	100	200	260	No Req't	Same as Zone B1	<ul style="list-style-type: none"> <li>Locate structures maximum distance from runway</li> <li>Minimum NLR of 25 dB in residences (including mobile homes) and office buildings <sup>13</sup></li> <li>Airspace review required for objects <math>&gt; 35</math> feet tall <sup>14</sup></li> <li>Aviation easement dedication</li> </ul>	
<b>C</b>	Extended Approach/Departure Zone	0.2 (average parcel size $\geq 5.0$ ac.)	75	150	195	20%	<ul style="list-style-type: none"> <li>Children's schools, day care centers, libraries</li> <li>Hospitals, nursing homes</li> <li>Bldgs with <math>&gt; 3</math> aboveground habitable floors</li> <li>Highly noise-sensitive outdoor nonresidential uses <sup>10</sup></li> <li>Hazards to flight <sup>8</sup></li> </ul>	<ul style="list-style-type: none"> <li>Minimum NLR of 20 dB in residences (including mobile homes) and office buildings <sup>13</sup></li> <li>Airspace review required for objects <math>&gt; 70</math> feet tall <sup>14</sup></li> <li>Deed notice required</li> </ul>	
<b>D</b>	Primary Traffic Pattern and Runway Buffer Area	(1) $\leq 0.2$ (average parcel size $\leq 5.0$ ac.) or <sup>15</sup> (2) $\leq 5.0$ (average parcel size $\geq 0.2$ ac.)	100	300	390	10%	<ul style="list-style-type: none"> <li>Highly noise-sensitive outdoor nonresidential uses <sup>10</sup></li> <li>Hazards to flight <sup>8</sup></li> </ul>	<ul style="list-style-type: none"> <li>Airspace review required for objects <math>&gt; 70</math> feet tall <sup>14</sup></li> <li>Children's schools, hospitals, nursing homes discouraged <sup>16</sup></li> <li>Deed notice required</li> </ul>	
<b>E</b>	Other Airport Environs	No Limit	No Limit <sup>17</sup>			No Req't	<ul style="list-style-type: none"> <li>Hazards to flight <sup>8</sup></li> </ul>	<ul style="list-style-type: none"> <li>Airspace review required for objects <math>&gt; 100</math> feet tall <sup>18</sup></li> <li>Major spectator-oriented sports stadiums, amphitheaters, concert halls discouraged beneath principal flight tracks <sup>19</sup></li> </ul>	
<b>*</b>	Height Review Overlay	Same as Underlying Compatibility Zone				Not Applicable	Same as Underlying Compatibility Zone	<ul style="list-style-type: none"> <li>Airspace review required for objects <math>&gt; 35</math> feet tall <sup>14</sup></li> <li>Aviation easement dedication</li> </ul>	

See Chapter 3 for airport-specific additions or exceptions to these policies.

Figure 5



The proposed subdivision and location in Zone D of the Banning Airport Compatibility zone is subject to ALUC review and qualifies as a Major Land Use Action. The scope or character of certain major land uses actions are listed below and is such that their compatibility with airport activity is a potential concern.

- 1) Any proposed expansion associated with future annexation of land to a city or special district.
- 2) Proposed pre-zoning associated with future annexation of land to a city.
- 3) Proposed development agreements or amendments to such agreements.
- 4) Proposed residential development, including land divisions, consisting of five or more dwelling units or lots.
- 5) Any discretionary development proposal for projects having a building floor area of 20,000 square feet or greater unless only ministerial approval (e.g., a building permit) is required.
- 6) Major capital improvements.
- 7) Proposed land acquisitions by a government entity
- 8) Any off-airport, nonaviation use of land within Zone A
- 9) Proposal for new development having a height of more than:
  - 35 feet within Compatibility Zone B1, B2 or a Height Review Overlay Zone;
  - 70 feet within Compatibility Zone C; or
  - 150 feet within Compatibility Zone D or E.
- 10) Any obstruction reviewed by the Federal Aviation Administration

- 11) Any project having the potential to create electrical or visual hazards to aircraft in flight.
- 12) Projects having the potential to cause attraction of birds or other wildlife that can be hazardous to aircraft operations.

As shown in Figure 4, the residential development provisions in the Zone D, paragraph (1) require the average parcel size less than or equal to 0.2 or a housing density greater than or equal to 5 units per acre. The RCALUC rational for a higher residential density is premised on the basis that noise concerns can be minimized either by limiting the number of dwelling units in affected areas or by allowing high-density development which tends to have comparatively high ambient noise levels.

The average lot size based on RCALUC requirements is approximately 8,712 square feet. The project's average lot size is 6,035 square feet. The project was considered by ALUC as the subdivision net density is less than the minimum five units per acre required by the RCALUC. Table 15 below denotes the subdivision's current unit density.

**Table 15: Project Density Characteristics**

Gross Area	10.67 Acres
Total Gross Density	4.31 du/Gross Acre
Net Area	10.15 acres
Total Net Density	4.53 du/Net Acre
<b>Zone D</b>	<b>≥ 5 du/ac</b>

Riverside County Airport Land Use Commission Reviewed the project for potential conflicts with the current Airport Land Use Plan and provided the following statement.

On November 15, 2018 the Riverside County Airport Land Use Commission (ALUC) found City of Banning Case No. 15-7004 (Tentative Tract Map 36710), a proposal to divide 10.67 acres located on the northerly side of Wilson Street, westerly of Florida Street, southerly of Hoffer Street, and easterly of Alessandro Road into 39 single-family residential lots, one drainage basin lot, and one open space lot, **CONSISTENT** with the 2004 Banning Municipal Airport Land Use Compatibility Plan, as amended in 2016, pursuant to Policy 3.3.6 of the Countywide Policies based on special Findings 1 and 2 specified below and subject to the following conditions:

**FINDINGS FOR A DETERMINATION OF CONSISTENCY PURSUANT TO POLICY 3.3.6 OF THE COUNTYWIDE POLICIES OF THE 2004 RIVERSIDE COUNTY AIRPORT LAND USE COMPATIBILITY PLAN:**

1. The City of Banning has guidelines requiring a minimum lot width of fifty (50) feet, thus limiting the applicant's ability to increase the project density within the single-family residential design model, which generally provides for lots that are 50-60 feet in width.
2. There are significant amounts of open area in the immediate vicinity, to wit, existing baseball and soccer fields on the school properties located along the south side of Wilson Street opposite from and to the southwest of the project site, which can supplement the open area provided on-site in serving as potential emergency landing areas.

Therefore, the project will not have a significant effect on the environment as the City of Banning has adopted the 2004 Airport Land Use Plan and requires all new development to remain in

compliance with the provisions of the Land Use Plan. This requirement is included in the typical Conditions of Approval for this project and requires no further analysis.

---

**3.8(f) *For a project within the vicinity of a private airstrip, would the Project result in a safety hazard for people residing or working in the Project area?***

---

**Determination: Less than Significant**

*Source: Riverside County Airport Land Use Commission response, December 16, 2016.*

**Plans, Policies, or Programs (PPP)**

The City of Banning has adopted the 2004 Banning Airport Land Use Plan which guides development in the area. All projects are conditioned to comply with the Airport Land Use Plan.

**Project Design Features (PDF)**

PDF 3.8-1      The Applicant is proposing a Tentative Tract Map to permit a housing density of 4.5 3.84 dwelling units per acre.

**Impact Analysis**

The project is located within Zone D of the Banning Municipal Airport Influence Area. The Riverside County Airport Land Use Compatibility (RCALUC) Plan assigns various zones which either prohibit, control or guide development within each district's airport influence area. Each specific alpha character, with Zone "A" being most restrictive based on safety and airspace protection factors and concerns to "E", less restrictive incorporate site specific density provisions for housing development and other uses. Zone D as noted in Figure 5 is classified as a "Primary Traffic Pattern and Runway Buffer Area". Table 3A of the RCALUC cites Zone D Risk Level as "Low". The table indicates that 20% to 30% of general aviation accidents take place in this zone. However the large area encompassed by this district as noted in Figure 5 means a low likelihood of accident occurrence in any given location. The primary concern is with uses for which potential consequences are severe, such as with very-high intensity level development in a confined area and noise impacts. For projects located within an airport influence area, the Riverside County Airport Land Use Commission (ALUC) is responsible for reviewing the plans, regulations and land use actions of local agencies for consistency with the RCALUC. ALUC's have no authority over existing land uses. The authority of the ALUC extends only to land in the vicinity of airports that is "not already devoted to incompatible uses".

Therefore, the project will not have a significant effect on the environment as the City of Banning has adopted the 2004 Airport Land Use Plan and requires all new development to remain in compliance with the provisions of the Land Use Plan. This requirement is included in the typical Conditions of Approval for this project and requires no further analysis.

---

**3.8(g) *Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?***

---

**Determination: Less Than Significant Impact.**

*Sources: Banning General Plan, Public Services and Facilities, Chapter VI.*

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

Activities associated with the proposed project would not impede existing emergency response plans for the project site and/or other land uses in the project vicinity. The project would not result in any closures of existing roadways that might have an effect on emergency response or evacuation plans in the vicinity of the project site. In addition, all vehicles and stationary equipment would be staged off public roads and would not block emergency access routes. Accordingly, implementation of the proposed project would not impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan. Consequently, impacts would be less than significant.

---

***3.8 (h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?***

---

**Determination: Less than Significant**

*Source: Banning General Plan, Public Services and Facilities, Chapter VI.*

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies or Programs applicable to the project relating to this issue

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

The project would not expose people or structures to a significant risk of loss, injury or death involving wildland fires, because there are no wildlands adjacent to this site. The project site is in an urban area and is not located in fire prone area. Therefore, the project will not expose people, structures, or infrastructure to risks of wildland fires. Consequently, impacts would be less than significant.



### 3.9 HYDROLOGY AND WATER QUALITY

<i>Would the Project:</i>	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Violate any water quality standards or waste discharge requirements?			■	
b. Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?			■	
c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of stream or river, in a manner, which would result in substantial erosion or siltation on- or offsite?			■	
d. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner, which would result in flooding on- or offsite?			■	
e. Create or contribute runoff which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff?			■	
f. Otherwise substantially degrade water quality?			■	
g. Place housing within a 100-year flood hazard as mapped on a Federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?				■
h. Place within a 100-year flood hazard area structures, which would impede or redirect flood flows?				■
i. Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?				■
j. Inundation by seiche, tsunami, or mudflow?				■

---

**3.9(a) Violate any water quality standards or waste discharge requirements?**


---

**Determination: Less Than Significant Impact.**

*Source: Tentative Tract Map 36710 United Engineering Group Preliminary Drainage Report, September 6, 2016, EnGEN Soils Percolation Feasibility Study for Infiltration Testing, TT 36710, March 24, 2014*

**Plans, Policies, or Programs (PPP)**

The following apply to the Project and would reduce impacts relating water quality and waste discharge requirements. These measures will be included in the project's Mitigation Monitoring and Reporting Program:

- PPP 3.9-1 Prior to grading permit issuance, the Project Proponent shall obtain a National Pollutant Discharge Elimination System permit from the State Resources Control Board. Evidence that a National Pollutant Discharge Elimination System permit has been issued shall be provided to the City of Banning prior to issuance of the first grading permit.
- PPP 3.9-2 Prior to grading permit issuance, the Project Proponent shall prepare a Storm Water Pollution Prevention Plan. Project contractors shall be required to ensure compliance with the Storm Water Pollution Prevention Plan and permit periodic inspection of the construction site by City of Jurupa Valley staff or its designee to confirm compliance.
- PPP 3.9-3 During construction, Project contractors shall be required to ensure compliance with the Project's Water Quality Management Plan associated with the Project and permit periodic inspection of the construction site by City of Banning staff or its designee to confirm compliance.
- PPP 3.9-4 The Project shall be in compliance with Chapter 13.24 Storm Water Management System of the Banning Municipal Code.

**Project Design Features (PDF)**

The following is incorporated into the Project by the applicant, and would reduce impacts related to water quality and discharge requirements. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

- PDF 3.9-1 Tentative Tract Map No. 36710 provides for 64,469 cubic foot (1.48-acre foot) water quality basin and infiltration. These areas shall be designed to manage water quality runoff to the satisfaction of the City Engineer and in accordance with the United Engineering Group Preliminary Drainage Report, September 6, 2016.



## Impact Analysis

### Construction

Construction of the Project would involve clearing, grading, paving, utility installation, building construction, and the installation of landscaping, which would result in the generation of potential water quality pollutants such as silt, debris, chemicals, paints, and other solvents with the potential to adversely affect water quality. As such, short-term water quality impacts have the potential to occur during construction of the Project in the absence of any protective or avoidance measures.

Pursuant to the requirements Chapter 13.24 of the City of Banning Municipal Code, the Project would be required to obtain a National Pollutant Discharge Elimination System Municipal Storm Water Permit for construction activities. The National Pollutant Discharge Elimination System permit is required for all Projects that include construction activities, such as clearing, grading, and/or excavation that disturb at least one acre of total land area.

In addition, the Project would be required to comply with the Colorado River Regional Water Quality Control Board's Colorado River Basin Water Quality Control Program. Compliance with the National Pollutant Discharge Elimination System permit and the Colorado River Basin Water Quality Control Program involves the preparation and implementation of a Storm Water Pollution Prevention Plan for construction-related activities, including grading. The Storm Water Pollution Prevention Plan would specify the Best Management Practices that the Project would be required to implement during construction activities to ensure that all potential pollutants of concern are prevented, minimized, and/or otherwise appropriately treated prior to being discharged from the subject property.

### Operation

Storm water pollutants commonly associated with the land uses proposed by the Project (i.e., residential) include sediment/turbidity, nutrients, trash and debris, oxygen-demanding substances, organic compounds, bacteria and viruses, oil and grease, pesticides, and metals.

Pursuant to the requirements of the City's National Pollutant Discharge Elimination System permit, a Water Quality Management Plan (WQMP) is required for managing the quality of storm water or urban runoff that flows from a developed site after construction is completed and the facilities or structures are occupied and/or operational. A WQMP describes the Best Management Practices that will be implemented and maintained throughout the life of a project to prevent and minimize water pollution that can be caused by storm water or urban runoff.

Based on the analysis above, with implementation of PPP 3.9-1 through PPP 3.9-4 and PDF 3.9-1, impacts would be less than significant and no mitigation measures are required.

---

**3.9(b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?**

---

**Determination: Less Than Significant Impact.**

*Source: Tentative Tract Map 36710 United Engineering Group Preliminary Drainage Report, September 6, 2016, EnGEN Soils Percolation Feasibility Study for Infiltration Testing, TT 36710, March 24, 2014*

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

The sole source of potable water supply is provided by the City of Banning Water Utility Department. More than 30,000 residents in Banning, depend on the Water Utility Department to provide water service to their homes and businesses. By supplying local groundwater pumped from City owned wells the department is able to meet the daily demands of these customers. The department provides plan reviews, design and construction management for Water Utility projects

The City's Water Utility Department does not have an immediate concern with water supply reliability. Because the District's water supply is groundwater, which is not subject to seasonal or year-to-year climatic change, it is not subject to short-term water shortages resulting from temporary dry weather conditions. The Water Utility Department and other groundwater users in the San Geronio Pass Sub Basin have been implementing ongoing groundwater management practices to extend the useful life of the groundwater resource to meet current and future demands. In the foreseeable future, the Water Utility Department will continue to be reliant on local groundwater supplies. The Water Utility Department will develop additional groundwater extraction and groundwater treatment facilities as needed to ensure a continuous and adequate water supply for its service area.

Based on the above analysis, the Project's demand for domestic water service would not substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level. Impacts would be less than significant and no mitigation is required

---

**3.9(c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner, which would result in substantial erosion or siltation on- or offsite?**

---

**Determination: Less Than Significant Impact.**

*Source: Tentative Tract Map 36710, Drainage Study, WQMP*

### Plans, Policies, or Programs (PPP)

The following applies to the Project and would reduce impacts relating to soil erosion. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

PPP 3.9-4      The Project shall be in compliance with Chapter 13.24 Storm Water Management System of the Banning Municipal Code.

### Project Design Features (PDF)

The following is incorporated into the Project by the applicant, and would reduce impacts related to soil erosion. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

PDF 3.9-1      Tentative Tract Map No. 36710 provides for 64,469 cubic foot (1.48 acre foot) water quality basin and infiltration. These areas shall be designed to manage water quality runoff to the satisfaction of the City Engineer and in accordance with the United Engineering Group Preliminary Drainage Report, September 6, 2016.

### Impact Analysis

The Construction of single family homes on the Project site will result in an increase in impermeable surfaces, and therefore an increase in runoff. The WQMP basins must be designed to retain a 100 year, three (3) hour storm event.

Based on the analysis above, with implementation of PPP 3.9-4 and PDF 3.9-1, impacts would be less than significant and no mitigation measures are required.

---

***3.9(d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner, which would result in flooding on or offsite?***

---

**Determination: Less Than Significant Impact.**

*Source: Tentative Tract Map 36710 United Engineering Group Preliminary Drainage Report, September 6, 2016, EnGEN Soils Percolation Feasibility Study for Infiltration Testing, TT 36710, March 24, 2014*

### Plans, Policies, or Programs (PPP)

The following applies to the Project and would reduce impacts relating to flooding. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

PPP 3.9-4      The Project shall be in compliance with Chapter 13.24 Storm Water Management System of the Banning Municipal Code.

### Project Design Features (PDF)

The following is incorporated into the Project by the applicant, and would reduce impacts related to flooding. This measure will be included in the Project's Mitigation Monitoring and Reporting Program:

- PDF 3.9-1 Tentative Tract Map No. 36710 provides for 64,469 cubic foot (1.48-acre foot) water quality basin and infiltration. These areas shall be designed to manage water quality runoff to the satisfaction of the City Engineer and in accordance with the United Engineering Group Preliminary Drainage Report, September 6, 2016.

### Impact Analysis

Based on the analysis above, with implementation of PPP 3.9-1 through PPP 3.9 -4 and PDF 3.9-1, impacts would be less than significant and no mitigation measures are required.

---

### ***3.9(e) Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff?***

---

### **Determination: Less than Significant Impact.**

*Source: Tentative Tract Map 36710 United Engineering Group Preliminary Drainage Report, September 6, 2016, EnGEN Soils Percolation Feasibility Study for Infiltration Testing, TT 36710, March 24, 2014*

### **Plans, Policies, or Programs (PPP)**

The following apply to the Project and would reduce impacts relating to drainage capacity and additional sources of polluted runoff. These measures will be included in the project's Mitigation Monitoring and Reporting Program:

- PPP 3.9-1. Prior to grading permit issuance, the Project Proponent shall obtain a National Pollutant Discharge Elimination System permit from the State Water Resources Control Board. Evidence that a National Pollutant Discharge Elimination System permit has been issued shall be provided to the City of Banning prior to issuance of the first grading permit.
- PPP 3.9-2 Prior to grading permit issuance, the Project Proponent shall prepare a Storm Water Pollution Prevention Plan (SWPPP). Project contractors shall be required to ensure compliance with the SWPPP and permit periodic inspection of the construction site by City of Banning staff or its designee to confirm compliance.
- PPP 3.9-3 During construction, Project contractors shall be required to ensure compliance with the Project's Water Quality Management Plan associated with the Project and permit periodic inspection of the construction site by City of Banning staff or its designee to confirm compliance.
- PPP 3.9-4 The Project shall be in compliance with Chapter 13.24 Storm Water Management System of the Banning Municipal Code.

**Project Design Features (PDF)**

The following is incorporated into the Project by the applicant, and would reduce impacts related to drainage capacity and additional sources of polluted runoff. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

- PDF 3.9-1      Tentative Tract Map No. 36710 provides for 64,469 cubic foot (1.48-acre foot) water quality basin and infiltration. These areas shall be designed to manage water quality runoff to the satisfaction of the City Engineer and in accordance with the United Engineering Group Preliminary Drainage Report, September 6, 2016.

**Impact Analysis**

Water runoff from the site will be directed to the on-site water quality basin and an infiltration pit before discharging into the storm drain system.

Based on the analysis above, with implementation of PPP 3.9-1 through PPP 3.9-4 and PDF 3.9-1, impacts would be less than significant and no mitigation measures are required.

---

**3.9(f) Otherwise substantially degrade water quality?**


---

**Determination: Less Than Significant Impact.**

*Sources: Project Application Materials.*

**Plans, Policies, or Programs (PPP)**

The following apply to the Project and would reduce impacts relating to water quality. These measures will be included in the project's Mitigation Monitoring and Reporting Program:

- PPP 3.9-1.      Prior to grading permit issuance, the Project Proponent shall obtain a National Pollutant Discharge Elimination System permit from the State Water Resources Control Board. Evidence that a National Pollutant Discharge Elimination System permit has been issued shall be provided to the City of Banning prior to issuance of the first grading permit.
- PPP 3.9-2      Prior to grading permit issuance, the Project Proponent shall prepare a Storm Water Pollution Prevention Plan. Project contractors shall be required to ensure compliance with the Storm Water Pollution Prevention Plan and permit periodic inspection of the construction site by City of Banning staff or its designee to confirm compliance.
- PPP 3.9-3      During construction, Project contractors shall be required to ensure compliance with the Project's Water Quality Management Plan associated with the Project and permit periodic inspection of the construction site by City of Banning staff or its designee to confirm compliance.
- PPP 3.9-4      The Project shall be in compliance with Chapter 13.24 Storm Water Management System of the Banning Municipal Code.

**Project Design Features (PDF)**



The following is incorporated into the Project by the applicant, and would reduce impacts related to water quality. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

PDF 3.9-1      Tentative Tract Map No. 36710 provides for 64,469 cubic foot (1.48-acre foot) water quality basin and infiltration. These areas shall be designed to manage water quality runoff to the satisfaction of the City Engineer and in accordance with the United Engineering Group Preliminary Drainage Report, September 6, 2016.

### **Impact Analysis**

There are no conditions associated with the proposed Project that could result in the substantial degradation of water quality beyond what is described above in Responses 3.9 (a), 3.9(c), and 3.9 (e).

Based on the analysis above, with implementation of PPP 3.9-1 through PPP 3.9-4 and PDF 3.9-1, impacts would be less than significant and no mitigation measures are required.

---

### ***3.9(g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?***

---

#### **Determination: No Impact.**

*Source: FEMA Information, Site within Zone X; denotes 500-yr flood area, United Engineering Group Preliminary Drainage Report for TTM 36710, September 6, 2016*

#### **Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

### **Impact Analysis**

The site is not located in Flood Zone X, which denotes a 500-yr flood area as designated by FEMA

---

### ***3.9(h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?***

---

*Source: FEMA Information, Site within Zone X; denotes 500-yr flood area, United Engineering Group Preliminary Drainage Report for TTM 36710, September 6, 2016*

#### **Determination: No Impact.**

#### **Plans, Policies, Programs (PPP)**

There are no Plans, Policies, Programs applicable to the Project relating to this issue.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

Refer to Issue 3.9(g) above. The Project area is not within a 100-year flood hazard. No Impact would occur and no mitigation measures are required.

---

#### ***3.9(i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?***

---

*Source: FEMA Information, Site within Zone X; denotes 500-yr flood area, United Engineering Group Preliminary Drainage Report for TTM 36710, September 6, 2016*

**Determination: No Impact.**

#### **Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

As noted Issue 3.9(g), the Project site is not subject to flooding. No dams, levees or water bodies exist in the immediate vicinity of the Project site that could adversely affect the site should a structural failure occur. No impact would occur and no mitigation measures are required.

---

#### ***3.9(j) Inundation by seiche, tsunami, or mudflow?***

---

**Determination: No Impact.**

Sources: Project Application Materials, Google Earth

#### **Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

The Project site would not be subject to inundation by a seiche, mudflow, and/or tsunami. No impact would occur and no mitigation measures are required.



### 3.10 LAND USE AND PLANNING

<i>Would the Project:</i>	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Physically divide an established community?				■
b. Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the Project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?			■	
c. Conflict with any applicable habitat conservation plan or natural community conservation plan?			■	

#### **3.10(a) Physically divide an established community?**

**Determination: No Impact.**

*Sources: Project Application Materials, Google Earth*

#### **Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

An example of a Project that has the potential to divide an established community includes the construction of a new freeway or highway through an established neighborhood. The Project site is an in-fill development consisting of 10.6-acres and located within proximity of residential development. Therefore, no impacts would occur with respect to dividing an established community.

#### **3.10(b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the Project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?**

**Determination: Less Than Significant Impact.**

*Source: City of Banning General Plan, Zoning Code.*

**Plans, Policies, or Programs (PPP)**

The applicable plans and policies relating to a conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the Project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect are described in the analysis below.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

As demonstrated throughout this Initial Study Checklist/Mitigated Negative Declaration, the Project would otherwise not conflict with any applicable goals, objectives, and policies of the General Plan, or the City of Banning Zoning Ordinance. The Project would not conflict with any applicable policy document, including, without limitation, the Western Riverside Multiple Species Habitat Conservation Plan, South Coast Air Quality Management District's Air Quality Management Plan, Southern California Association of Government's 2012, 2035 Regional Transportation Plan/Sustainable Communities Strategy, and Government's 2008 Regional Transportation Plan. The purpose of these plans are to avoid or mitigate an environmental effect.

In conclusion, the Project would not conflict with any applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating adverse environmental effects and impacts would be less than significant.

---

***3.10(c) Conflict with any applicable habitat conservation plan or natural community conservation plan?***

---

**Determination: Less than Significant**

*Source: General Biological Resources Assessment, Tract 36710, RCA Associates LLC, January 16, 2014, RCA MSHCP Info. App.*

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies or Programs relating to this issue.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

The Project site lies within the Pass Plan Area Plan Unit. The "Pass Plan Area Plan Unit" is a unit area of the MSHCP mapped by the Regional Conservation Authority (RCA), Western Riverside County. The RCA MSHCP Information mapping website lists the following environmental status of the project site:

- The Project site is not located within an MSHCP Criteria Cell (area proposed for conservation).
- The Project site is not located within a Cell group.
- The Project site is not in a criteria area species survey area.
- The Project site is not in a narrow endemic plant survey area.
- The Project site is not in a mammal, owl, or amphibian survey area.
- The property does not support any stream channels or desert

In conclusion, the RCA Associates LLC Biological report prepared for this project, dated January 16, 2014 determined that the 39 single family unit subdivision with regard to General Vegetation and Wildlife, that the impacts associated with displacement of threatened or endangered wildlife species given the past disturbance of the site is not anticipated to be significant. The project would displace certain wildlife, such as rodents and birds. However, the number of wildlife species that would be displaced is very low; Threatened, Endangered, and Species of Special Concern will not be impacted as a result of the project. Consequently, future development of the site is not expected to generate significant impacts to any biological resources; and lastly, impacts associated with Habitat Fragmentation and Wildlife Movement will not be affected as there are no wildlife corridors present on the site or in adjacent areas. Moreover, the project will not impede regional wildlife movement or impact any MSHCP-designated corridors or habitat linkages. Consequently, impacts will be less than significant and no mitigation is required. (RCA Associates LLC, Bio Report, pg. 7)

### 3.11 MINERAL RESOURCES

<i>Would the Project:</i>	<b>Potentially Significant Impact</b>	<b>Less than Significant With Mitigation Incorporated</b>	<b>Less Than Significant Impact</b>	<b>No Impact</b>
a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?				■
b. Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?				■

---

**3.11(a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?**

---

**Determination: No Impact.**

*Sources: City of Banning General Plan, Environmental Resources, Chapter IV*

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

No mineral resource extraction activity is known to have ever occurred on the property. According to mapping conducted by the California Geological Survey which maps areas known as Mineral Resources Zones (MRZs), the proposed Project site is mapped within MRZ-3, which is defined as "areas with no known significant mineral deposits."

The Project site is not located within an area of known to be underlain by regionally- or locally important mineral resources, or within an area that has the potential to be underlain by regionally or locally-important mineral resources, as disclosed by the General Plan. Accordingly, implementation of the proposed Project would not result in the loss of availability of a known mineral resource that would be of value to the region or the residents of the State of California. Accordingly, no impact would occur.

---

**3.11(b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?**

---

**Determination: No Impact.**

*Sources: City of Banning General Plan, Environmental Resources, Chapter IV*

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

Refer to the Issue 3.11(a), above. The General Plan does not identify any locally important mineral resource recovery sites on-site or within close proximity to the Project site, nor are any mineral resource recovery operations located on-site or in the surrounding area. No impact.

### 3.12 NOISE

<i>Would the Project:</i>	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?			■	
b. Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?			■	
c. A substantial permanent increase in ambient noise levels in the Project vicinity above levels existing without the Project?			■	
d. A substantial temporary or periodic increase in ambient noise levels in the Project vicinity above levels existing without the Project?			■	
e. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the Project expose people residing or working in the Project area to excessive noise levels?		■		
f. For a project within the vicinity of a private airstrip, would the Project expose people residing or working in the Project area to excessive noise levels?				■

**3.12(a)** *Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?*

**Determination: Less Than Significant Impact.**

*Sources: Project Application Materials, Noise Element of the Banning General Plan, Banning Zoning Code, Chapter 8.44, Noise Regulations of the Municipal Code.*

**Plans, Policies, or Programs (PPP)**

The following apply to the Project and would reduce impacts relating to noise. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

PPP 3.12-1 In order to ensure compliance with the Banning Municipal Code Chapter 8.44 Noise Regulations, prior to the issuance of a grading permit, the developer is required to submit a construction-related noise mitigation plan to the City for review and approval. The plan must depict the location of construction equipment and how the noise from this equipment will be mitigated during construction of this project. In addition, the plan shall require that the following notes are included on grading

plans and building plans. Project contractors shall be required to ensure compliance with the notes and permit periodic inspection of the construction site by City of Banning staff or its designee to confirm compliance. These notes also shall be specified in bid documents issued to prospective construction contractors.

a) All construction activities shall comply with Chapter 8.44 (Noise Regulations) of the City of Banning Municipal Code.

b) Construction contractors shall equip all construction equipment, fixed or mobile, with properly operating and maintained mufflers, consistent with manufacturers' standards.

c) All stationary construction equipment shall be placed in such a manner so that emitted noise is directed away from any sensitive receptors adjacent to the Project site.

d) Construction equipment staging areas shall be located the greatest distance between the staging area and the nearest sensitive receptors.

### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

### **Impact Analysis**

Development of the Project site as a residential community has the potential to expose persons to or result in elevated noise levels during both short-term construction activities and under long-term conditions. Short-term (i.e., construction) and long-term (i.e., operational) noise impacts associated with the Project are discussed below

#### *Short-term Construction Noise*

The most significant source of short-term noise impact is related to noise generated during construction activities on the Project site which would result in potential noise impacts to nearby sensitive receptors. Construction is performed in discrete steps, each of which has its own mix of equipment and consequently its own noise characteristics. Thus noise levels will fluctuate depending upon construction phase, equipment type, duration of equipment use, distance between the noise source and receptor, and the presence or absence of noise attenuation structures.

As shown on Table 11 below, noise levels generated by heavy construction equipment can range from approximately 75 dBA to 99 dBA when measured at 50 feet



**Table16. Typical Construction Equipment Noise Levels**

Type of Equipment	Range of Sound Levels Measured (dBA at 50 feet)
Pile Drivers	81 to 96
Rock Drills	83 to 99
Jack Hammers	75 to 85
Pneumatic Tools	78 to 88
Pumps	68 to 80
Dozers	85 to 90
Tractors	77 to 82
Front-End Loaders	86 to 90
Graders	79 to 89
Air Compressors	76 to 86
Trucks	81 to 87
<i>Source: "Noise Control for Buildings and Manufacturing Plants", Bolt, Beranek &amp; Newman, 1987, as cited in the General Plan EIR</i>	

However, these noise levels diminish with distance from the construction site at a rate of 6 dBA per doubling of distance. For example, a noise level of 75 dBA for a jack hammer measured at 50 feet from the noise source to the receptor would be reduced to 69 dBA at 100 feet from the source to the receptor, and would be further reduced to 63 dBA at 200 feet from the source to the receptor.

Chapter 8.44 of the City of Banning Municipal Code (Noise Regulations) includes a provision that exempts construction activities from any maximum noise level standard, provided that construction activities occur between the hours of 7:00 A.M. and 6:00 P.M. The person engaged in such activity is hereby permitted to exceed sound levels otherwise set forth in this chapter for the duration of the activity during the above described hours for purposes of construction. However, nothing contained herein shall permit any person to cause sound levels to at any time exceed fifty-five dB(A) for intervals of more than fifteen minutes per hour as measured in the interior of the nearest occupied residence or school. If the building official should determine that the public health and safety will not be impaired by the construction related noise, the building inspector may issue a permit for construction within the hours of 6:00 P.M. and 7:00 A.M., upon application being made at the time the permit for the work is awarded or during the progress of the work. The building official may place such conditions on the issuance of the permit as to him or her shall seem appropriate to maintain the public health and safety.

### *Noise Impacts to the Project*

The Project is considered a "sensitive receptor" because it is a residential development. Impacts to the Project would be significant if the exterior area of the homes (i.e. yards) would be exposed to noise levels in excess of 55 dBA. For the interior area of the homes impacts would be significant if exposed to noise levels in excess of 45 dBA.

The Project site is located in an area largely characterized by urban development. Residential land uses surround the site on all sides. Noise producing land uses that impact residential uses include, but are not limited to, agriculture uses, industrial uses, commercial uses, and noise from major highways and roads.

The Project site is located north of Wilson Street and lies between Alessandro Street and Florida Street. Wilson Street, Alessandro Road and Florida Street are classified as "Local Streets" and are not considered a major highway or roadway that produces significant levels of traffic noise. As such, impacts are considered to be less than significant.

### *Noise Impacts Generated by the Project*

As established by the General Plan performance standards, project-related noises, as projected to any portion of any surrounding property containing a habitable dwelling, hospital, school, library or nursing home, shall not exceed 55 equivalent level dBA (dBA Leq) between 7 a.m. and 10 p.m. or 45 dBA Leq between 10 p.m. and 7:00 a.m. for a cumulative period of more than fifteen (15) minutes per hour.

The primary source of noise generated by the Project will be from the vehicle traffic generated by the new homes to the nearby residential uses. The Project would generate an estimated additional 457 trip-ends per day with 36 total vehicles per hour during the AM peak hour, and 48 total vehicles per hour during the PM peak hour.

The City of Banning considers a project to result in a significant traffic-related noise impact if traffic generated by that project would cause or contribute to exterior noise levels at sensitive receptor locations in excess of 55 dBA CNEL and the project's contribution to the noise environment equals 3.0 dBA CNEL or more. (A change of 3.0 dBA is considered "barely perceptible" by the human ear and changes of less than 3.0 dBA CNEL generally cannot be perceived except in carefully controlled laboratory environments). Due to the low traffic volume and speeds, traffic noise from the Project will not make a significant contribution to the noise environment.

Based on the analysis above, with implementation of PPP 3.12-1 impacts would be less than significant.

---

### ***3.12(b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?***

---

#### **Determination: Less Than Significant Impact.**

*Source: Project Application Materials, Noise Element of the Banning General Plan, Banning Zoning Code, Chapter 8.44, Noise Regulations of the Municipal Code.*

#### **Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

##### *Construction Vibration*

Under existing conditions, there are no known sources of ground-borne vibration or noise that affect the Project site. The Project would not generate ground-borne vibration or ground-borne noise, except, potentially, during the construction phase from the use of heavy construction equipment. The Project will not employ any pile driving, rock blasting, or rock crushing equipment during construction activities, which are the primary sources of ground-borne noise and vibration during construction.

##### *Operational Vibration*

There are no conditions associated with the long-term operation of the proposed Project that would result in the exposure of on- or off-site residents to excessive ground-borne vibration or noise. The proposed Project would develop the subject property as a residential community and would not include nor require equipment, facilities, or activities that would generate ground-borne vibration or ground-borne noise. In addition, the Project site is not located in the vicinity of a railroad line or any other use associated with ground-borne vibration or ground-borne noise; therefore, the Project would not expose future on-site residents to substantial ground-borne vibration or noise.

Based on the above analysis, operation the Project would not expose on- or off-site sensitive receptors to substantial ground-borne vibration or ground-borne noise. Impacts are less than significant and no mitigation is required.

---

#### **3.12(c)    *A substantial permanent increase in ambient noise levels in the Project vicinity above levels existing without the Project?***

---

#### **Determination: Less Than Significant Impact.**

*Source: Project Application Materials, Noise Element of the Banning General Plan, Banning Zoning Code, Chapter 8.44, Noise Regulations of the Municipal Code.*

#### **Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

As discussed above under Issue 3.12(a), the only potential for the Project to create a permanent increase in ambient noise levels is the result of future traffic generated by the proposed Project that has the potential to cause or contribute to elevated traffic-related noise volumes at offsite locations. The analysis presented under Issue 3.12(a) concluded that the Project's incremental noise contributions to study area roadways would be considered "barely perceptible" (i.e., less than 3.0 dBA CNEL). As such, offsite transportation-related noise impacts would be less than significant and no mitigation is required.

---

**3.12(d)    *A substantial temporary or periodic increase in ambient noise levels in the Project vicinity above levels existing without the Project?***

---

**Determination: Less Than Significant Impact.**

*Sources: Project Application Materials, Noise Element of the Banning General Plan, Banning Zoning Code, Chapter 8.44, Noise Regulations of the Municipal Code.*

**Plans, Policies, or Programs (PPP)**

See PPP 3.12-1

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

As discussed above under Issue 3.12(a), the only potential for the Project to create a substantial temporary or periodic increase in ambient noise levels is during its construction phase. The analysis presented under Issue 3.12(a) concluded that the Project would result in elevated noise levels during construction but were less than significant.

Based on the analysis above, with implementation of PPP 3.12-1, impacts would be less than significant and no mitigation measures are required.

---

**3.12(e)    *For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the Project expose people residing or working in the Project area to excessive noise levels?***

---

**Determination: Less than significant with mitigation.**

*Source: Project Application Materials, Noise Element of the Banning General Plan, Banning Zoning Code, Chapter 8.44, Noise Regulations of the Municipal Code, Riverside County Airport Land Use Compatibility Plan Policy Document (Adopted October 2004), Airport Land Use Commission (ALUC) Development Review Report December 16, 2016.*

**Plans, Policies, or Programs (PPP)**

This measure will be included in the project's Mitigation Monitoring and Reporting Program:

- PPP 3.12-2 The City shall require building setbacks, the installation of wall and window insulation, soundwalls, earthen berms, and/or other mitigation measures in areas exceeding the City's noise standards for private development projects as they occur.

### Project Design Features (PDF)

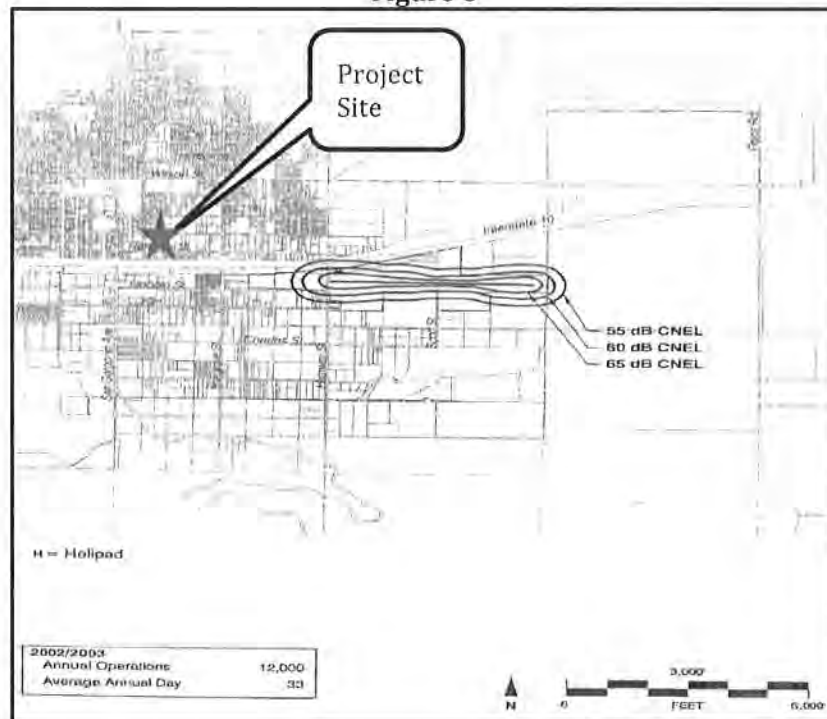
There are no Project Design Features applicable to the Project relating to this issue.

### Impact Analysis

The project is located within Zone D of the Banning Municipal Airport Influence Area. The Riverside County Airport Land Use Compatibility (RCALUC) Plan assigns various zones which either prohibit, control or guide development within each district's airport influence area. Each specific alpha character, with Zone "A" being most restrictive based on safety and airspace protection factors and concerns to "E", less restrictive incorporate site specific density provisions for housing development and other uses. Zone D as noted in Figure 5 is classified as a "Primary Traffic Pattern and Runway Buffer Area". The primary concern is with uses for which potential consequences are severe, such as with very-high intensity level development in a confined area and *noise* impacts.

The Banning Municipal Airport averages approximately 10 to 15 takeoffs and landings daily, and about 12,000 operations per year. Air traffic is comprised primarily of private, single-engine fixed-wing aircraft. The Banning Municipal Airport Master Plan (December 1990), shows typical takeoff noise levels for such aircraft. Levels range from approximately 56 dba to 68 dba at 7,100 feet from brake release. As noted in Figure 6 below, noise contours are generally contained within the airport boundary, and extend to lands designated for airport and related industrial uses, which are considered less sensitive.

Figure 6





For the City of Banning, the applicable limit one-hour average for outdoor noise levels in residential areas is 55 dBA during daytime hours, and 45 dBA during evening and nighttime hours (Ordinance 1138). The project site is well outside the 65 db CNEL noise contour. For project's located within an airport influence area". As noted in Figure 6,

In accordance with ALUC recommendations, the residential housing development will incorporate noise attenuating measures to ensure that the ambient noise conforms to the City of Banning noise standards. Pursuant to the ALUC recommendations and PPP 3.12-1 and PPP 3-12.2 impacts associated with noise will be less than significant with mitigation. ALUC mitigation measures are as follows:

**Mitigation Measures:** *Source: Airport Land Use Commission Development Review Report, December 16, 2016.*

MM- NOISE- 1 Highly noise-sensitive outdoor nonresidential uses are prohibited.

MM- NOISE- 2 The following notice shall be provided to all potential purchasers of the property, and shall be recorded as a deed notice.

**NOTICE OF AIRPORT IN VICINITY**

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances [can vary from person to person. You may wish to consider what airport annoyances], if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you. Business & Professions Code Section 11010 (b) (13) (A)

---

**3.12(f) For a project within the vicinity of a private airstrip, would the Project expose people residing or working in the Project area to excessive noise levels?**

---

**Determination: Less than Significant with Mitigation**

*Source: Riverside County Airport Land Use Compatibility Plan Policy Document (Adopted October 2004), Banning General Plan*

**Plans, Policies, or Programs (PPP)**

PPP 3.12-1 and PPP 3.12-2

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

As discussed Response 3.12 (e), the project site is outside the Banning Airport noise contours. Impacts associated with aviation noise will not exceed the residential ambient noise standards for

residential development. Moreover, in accordance with ALUC's mitigation and PPP 3.12-1 and PPP 3.122, exposure of people to impacts arising from the private airstrip will be less than significant.

### 3.13 POPULATION AND HOUSING

<i>Would the Project:</i>	<b>Potentially Significant Impact</b>	<b>Less than Significant With Mitigation Incorporated</b>	<b>Less Than Significant Impact</b>	<b>No Impact</b>
a. Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?			■	
b. Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?				■
c. Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?				■

**3.13(a)** *Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?*

**Determination: Less than Significant Impact.**

*Sources: Project Application City of Banning General Plan, Housing Element.*

#### **Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

The Project would be developed with 39 single-family detached residential homes. Pursuant to population estimates prepared by the State Department of Finance, single-family detached units within the City are occupied by an average of 2.7 persons per dwelling unit (*City of Banning General Plan, Housing Element, Page III-127*). Therefore, using population generation estimates provided by the State, the Project could increase the City of Banning's population by up to 105 new residents if all the new residents currently reside outside the City limits.



Typically, population growth would be considered a significant impact pursuant to CEQA if it directly or indirectly affects the ability of agencies to provide needed public services and requires the expansion or new construction of public facilities and utilities.

Section 3.14, Public Services, of this Initial Study Checklist demonstrates that the impacts on public services is less than significant so the public service providers' ability to provide services will not be reduced. As such, impacts are less than significant and no mitigation measures are required.

---

**3.13(b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?**

---

**Determination: No Impact.**

*Sources: Project Application City of Banning General Plan, Housing Element*

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

The Project site is vacant and contains no housing. As such, there are no impacts that would require the construction of replacement housing elsewhere. No mitigation measures are required.

---

**3.13(c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?**

---

**Determination: No Impact.**

*Sources: Project Application City of Banning General Plan, Housing Element*

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, Programs, or Standard Conditions applicable to the Project relating to this issue.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

The Project site is vacant and contains no housing. As such, there are no impacts that would require the construction of replacement housing elsewhere.

### 3.14 PUBLIC SERVICES

<i>Would the Project:</i>	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Would the Project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
1) Fire protection?			■	
2) Police protection?			■	
3) Schools?			■	
4) Parks?			■	
5) Other public facilities?			■	

**3.14(a)** *Would the Project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:*

#### **FIRE PROTECTION**

**Determination: Less Than Significant Impact.**

*Sources: City of Banning General Plan, Police and Fire Protection Element*

#### **Plans, Policies, or Programs (PPP)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

Buildout of the site will have a less than significant impact on public services. The proposed Project will be served by the City Police Department and Riverside County Fire Department under contract. The project will be required to pay the mandated school fees, development impact fees and park in lieu fees in place at the time of issuance of building permits. Payment of these fees and future revenue stream from property tax will lower potential impacts associated with additional services to a less than significant impact.

### **POLICE PROTECTION**

#### **Determination: Less Than Significant Impact.**

*Sources: City of Banning General Plan, Police and Fire Protection Element.*

#### **Plans, Policies, or Programs (PPP)**

The following applies to the Project and would reduce impacts relating to police protection. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

- PPP 3.14-1     The Project shall comply with applicable City's Development Impact Fees which requires payment of a development mitigation fee to assist in providing funds to offset the incremental increase in the demand for public services, parks and open space that would be created by the Project. Prior to the issuance of building permits. The Project Applicant shall pay fees in accordance with the City of Banning Municipal Code Requirements.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

The City of Banning Police Department provides community policing to the Project area. The Banning Police Station is located at 125 East Ramsey, just under one (1) mile from the Project site. The Banning Police Department current level of law enforcement staffing is approximately 1.4 sworn officers for every 1,000 residents. Banning has historically maintained a goal of 1.8 police officers per 1,000 residents. The Banning Police Department has a total of 35 sworn positions, of which three are grant positions and 16 unsworn positions for a total of 51 positions. At full buildout, the Project would introduce approximately 124 105 new residents to the Project area. The Project's buildout would not affect or alter the current ratio of sworn officers per 1,000 residents. No additional police staffing or the construction of new or expanded police facilities is required.

The Project would be required to comply with the provisions of the City's Development Impact Fee Ordinance, which requires a fee payment to assist the City in providing for public services, including police protection services. Payment of the Development Impact Fee would ensure that the Project provides its fair share of funds for additional police protection services, which is intended, to offset the incremental increase in the demand that would be created by the Project.

Based on the above analysis, with implementation of PPP 3.14-2, impacts related to police protection would be less than significant and no mitigation measures are required.

## **SCHOOLS**

### **Determination: Less Than Significant Impact.**

*Sources: City of Banning General Plan, Police and Fire Protection Element*

### **Plans, Policies, or Programs (PPP)**

The following applies to the Project and would reduce impacts relating to schools. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

PPP 3.14-2      Prior to the issuance of building permits, the Project Applicant shall pay required development impact fees to the Banning Unified School District following protocol for impact fee collection.

### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

### **Impact Analysis**

The construction of 39 residential homes as proposed by the Project would have an incremental increase in the population in the local area and would generate additional demands to the existing public school system by generating additional students to be served by the Banning Unified School District. The Project would be required to contribute fees to the Banning Unified School District in accordance with the Leroy F. Greene School Facilities Act of 1998 (Senate Bill 50). Pursuant to Senate Bill 50, payment of school impact fees constitutes complete mitigation for Project-related impacts to school services.

Based on the above analysis, with implementation of PPP 3.14-2, impacts related to schools would be less than significant and no mitigation measures are required.

## **PARKS**

### **Determination: Less Than Significant Impact.**

*Source: City of Banning General Plan Parks and Recreation Element, Open Space and Conservation Element*

### **Plans, Policies, or Programs (PPP)**

The following applies to the Project and would reduce impacts relating to parks.

PPP 3.14-3      Prior to the issuance of a building permit, the Project Applicant shall pay required park development impact fees to the City of Banning Recreation and Park District.

### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

### **Impact Analysis**

The Project proposes the construction of 39 residential units. Based on population estimates prepared by the State Department of Finance, the Project is estimated to provide housing for up to 105 residents (2.7 persons per household x 39 = 105). The Project does not propose any park land so it will be subject to the park land impact fee.

Based on the above analysis, with implementation of PPP 3.14-3, impacts related to parks would be less than significant and no mitigation measures are required.

### **OTHER PUBLIC FACILITIES**

#### **Determination: Less Than Significant Impact.**

*Source: City of Banning General Plan, Public Building and Facilities Element*

#### **Plans, Policies, or Programs (PPP)**

The following apply to the Project and would reduce impacts relating to parks.

PPP 3.14-2 above is applicable to the Project.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

### **Impact Analysis**

Development of the Project would result in an increase in the population of the Project area and would have an incremental increase the demand for public services, including public health services and library services. However, the population increase generated by the Project would not require the construction of new or expanded public facilities.

The Project would be required to comply with the provisions of the City's Development Impact Fee, which requires a fee payment to assist the City in providing public services. Payment of the Development Impact Fee would ensure that the Project provides fair share of funds for additional public services. These funds may be applied to the acquisition and/or construction of public services and/or equipment.

Based on the above analysis, with implementation of PPP 3.14-1 and 3.14-2, above, impacts related to parks would be less than significant and no mitigation measures are required.

## 3.15 RECREATION

<i>Would the Project:</i>	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Would the Project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?			■	
b. Does the Project include recreational facilities or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment?			■	

---

**3.15(a)** *Would the proposed Project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?*

---

**Determination: Less than Significant Impact.**

*Sources: City of Banning General Plan Parks and Recreation Element*

**Plans, Policies, or Programs (PPP)**

There are no Project Design Features applicable to the Project relating to this issue.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

The Project's 105 estimated residents would not substantially increase the use of existing public park facilities and would not require the modification existing parks or modification of new park facilities.

With implementation of PDF 3.14-1, impacts related to recreational facilities would be less than significant and no mitigation measures are required.

---

**3.15(b)** *Does the Project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse effect on the environment?*

---

**Determination: Less than Significant Impact.**

*Source: Project Application Materials, City of Banning Parks and Recreation Element*

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

The Project does not propose any on-site recreational facilities nor does it required the construction or expansion of recreational facilities given its limited population generation (105 residents).

Based on the above analysis, impacts related to parks and recreational facilities would be less than significant and no mitigation measures are required.



## 3.16 TRANSPORTATION/TRAFFIC

<i>Would the Project:</i>	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?			■	
b. Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?			■	
c. Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?			■	
d. Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?			■	
e. Result in inadequate emergency access?			■	
f. Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?			■	

**3.16(a)** *Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?*

**Determination: Less Than Significant Impact.**

*Sources:* Project Application Materials, Focused Traffic Impact for Banning TTM 36710 (RK Engineering Group, Inc.), July 11, 2016

### Plans, Policies, or Programs (PPP)

The following apply to the Project and would reduce impacts relating to transportation and traffic. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

PPP 3.16-1 Prior to the issuance of any building permits, the Project Proponent shall make pay the City's Traffic Control Facility Fee per household unit constructed.

### Project Design Features (PDF)

There are no Project Design Features applicable to the Project relating to this issue.

### Impact Analysis

#### *Motorized Vehicle Travel*

Trips generated by the Project's proposed land uses have been estimated based on trip generation rates identified in the Focused Traffic Impact Study prepared by RK Engineering Group, Inc., shown in Table 17.

**Table 17. Trip Generation Rates**

Land Use Type	Units	AM Peak Hour			PM Peak Hour			Daily
		Total	In	Out	Total	In	Out	
Single-Family Detached Housing Trips/Unit Land Use Category: 210	39	0.75 36	0.19 9	0.56 27	1.00 48	0.63 30	0.37 18	9.52 457
Source: RK Engineering Group, Inc., Focused Traffic Impact Study, TTM 36710. July 11, 2016								

The Project is estimated to generate the following number of trips:

Based on the Banning General Plan Amendment Change in Level of Service Policy, dated September 2012, the City of Banning establishes Level of Service (LOS) D as the minimum LOS to be maintained on all roadway segments and intersections. Trip generation for the proposed project was calculated using rates from the Institute of Transportation Engineers (ITE) Trip Generation (9<sup>th</sup> Edition) for Land Use 39 Single-Family Detached Housing. The project trip generation would generate 36 trips in the a.m. peak hour, 48 trips in the p.m. hour and 457 daily trips.

Based on the project's trip generation, under existing and opening year conditions, all the studied intersections operate at satisfactory LOS or better.

#### *Mass Transit and Pedestrian Facilities*

##### *Transit Service*

The Project area is currently served by the Banning Transit Services, which provides fixed route bus service along three routes. The Project is not proposing to construct any improvements and will not interfere with the existing bus service. As such, the Project as proposed will not conflict with an applicable plan, ordinance or policy applying to transit services.

### *Bicycle & Pedestrian Facilities*

The Project is not proposing to construct any improvements that will interfere with bicycle and pedestrian use. The Project will not conflict with an applicable plan, ordinance or policy applying to non-motorized travel. Impacts are less than significant.

Based on the above analysis, with implementation of PPP 3.16-1 would be less than significant and no mitigation measures are required.

---

**3.16(b)** *Conflict with an applicable congestion management program, including, but not limited to, level-of-service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?*

---

**Determination: Less Than Significant Impact.**

#### **Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

The Project proposes only 39 lots and would generate less than 457 daily trips on intersections in the vicinity of the Project site. As such, the Project is not forecast to deteriorate the minimum Level of Service in the Project area as required by the General Plan. Therefore, the Project will not be in conflict with the City of Banning's Congestion Management Program. Impacts are less than significant and no mitigation measures are required.

---

**3.16(c)** *Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?*

---

**Determination: Less Than Significant Impact.**

#### **Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

The Project does not include any air travel component (e.g., runway, helipad, etc.) Accordingly, the Project would not have the potential to affect air traffic patterns, including an increase in traffic

levels or a change in flight path location that results in a substantial safety risk. Therefore, impacts are less than significant.

---

**3.16(d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?**

---

**Determination: Less Than Significant Impact.**

Source: Project Application Materials, Focused Traffic Impact for Banning TTM 36710 (RK Engineering Group, Inc.), July 11, 2016

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

The residential land uses proposed Project would be compatible with existing development in the surrounding area; therefore, implementation of the Project would not create a transportation hazard as a result of an incompatible use.

The Project would provide adequate vehicular and pedestrian safety and ensure that no hazardous transportation design features would be introduced by the Project. Accordingly, the Project would not substantially increase hazards due to a design feature or incompatible use. Impacts would be less than significant.

---

**3.16(e) Result in inadequate emergency access?**

---

**Determination: Less Than Significant Impact.**

Source: Project Application Materials, Focused Traffic Impact for Banning TTM 36710 (RK Engineering Group, Inc.), July 11, 2016

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue.

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

Project would result in a new residential community, which would increase the need for emergency access to-and-from the site. Adequate emergency access would be provided to the Project site via Wilson Street. During the course of the required review of the Project, the Project's transportation design was reviewed by the City's Public Works/Engineering Department, County Fire Department,

and City of Banning Police Department to ensure that adequate access to and from the site would be provided for emergency vehicles. With the City/County requirements for emergency vehicle access, impacts would be less than significant and no mitigation measures are required.

---

**3.16(f) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?**

---

**Determination: Less Than Significant Impact.**

*Source: General Plan Circulation Element, Project Application Materials, Focused Traffic Impact for Banning TTM 36710 (RK Engineering Group, Inc.), July 11, 2016*

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

The Project as proposed will not conflict with an applicable plan, ordinance or policy applying to transit services. Impacts are less than significant.

### 3.17 TRIBAL CULTURAL RESOURCES

<i>Would the Project:</i>	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:				
a. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or		■		
b. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.		■		

***a-b Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public resources Code section 5020.1(k), or A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.***

**Determination: Less than significant impact with mitigation.**

*Source: Banning Zoning Code Section 18.18.120 D, BCR Consulting LLC, Cultural Resources Records Search for TTM 36710, March 2, 2017 and BCR Consulting LLC, Cultural Resources Assessment (Field Survey) for APN's 534-183-014, 534-200-004 and 534-200-047, May 1, 2017*

#### Plans, Policies, or Programs (PPP)

The following apply to the Project and would reduce impacts relating to Tribal Cultural Resources. These measures will be included in the project's Mitigation Monitoring and Reporting Program:

- PPP 3.17-1 If human remains are encountered during the undertaking, State Health and Safety Code Section 7050.5 states that no further disturbance shall occur until the County Coroner has made a determination of the origin and disposition pursuant to Public Resources Code Section 5097.98. The County Coroner must be notified of the find immediately. If the remains are determined to be prehistoric, the Coroner will notify



the Native American Heritage Commission (NAHC), which will determine and notify a Most Likely Descendant (MLD). With the permission of the landowner or his/her authorized representative, the MLD may inspect the site of the discovery. The MLD shall complete the inspection within 48 hours of notification by the NAHC.

- PPP 3.17-2 Banning Zoning Code: As required by the City of Banning Zoning Regulations, Section 18.18.120 D, discoveries made of archaeological or paleontological interest shall stop operations until a qualified archeologist or paleontologist has assessed the significance of the find.

### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

### **Impact Analysis**

BCR Consulting LLC (BCR Consulting) was under contract to United Engineering Group to conduct a Cultural Resources Assessment of Assessor Parcel Numbers 534-183-014, 534-200-004, and 534-200-047 (the project) in the City of Banning, Riverside County, California. The work was performed pursuant to the California Environmental Quality Act (CEQA). A cultural resources records search and field survey were conducted for the project.

The records search revealed that 14 cultural resource studies have taken place resulting in the recording of 105 cultural resources within one-mile of the project site. Of these resources, 104 were historic-period and one was a prehistoric archaeological site. The nearest historic-period resource was a single-family residence adjacent to the northwest of the project site. The only prehistoric resource in the records search radius was a prehistoric habitation site (designated P-33-99) located approximately ½ mile to the northwest of the project site. Of the 14 previous studies, none has assessed the project site. No cultural resources have been previously recorded within its boundaries.

During the field survey, BCR Consulting archaeologists did not discover any cultural resources (including prehistoric or historic-period archaeological sites or historic-period buildings) within the project site boundaries. Based on these results, BCR Consulting recommends a finding of no impacts to historical resources under CEQA. BCR Consulting also recommends that no additional cultural resources work or monitoring is necessary during proposed activities associated with the development of the project site. However, if previously undocumented cultural resources are identified during earthmoving activities, a qualified archaeologist should be contacted to assess the nature and significance of the find, diverting construction excavation if necessary.

After consultation with local Native American Tribes, it was agreed that a Native American Monitor be present during initial grading of the project site to help identify any undiscovered cultural resources that may not have been visible from the surface. This request was initiated by the Morongo Band of Mission Indians who expressed the theory that no discoveries have been made at the site due to the fact that the site has never been disturbed. Typically, cultural resources lie within the first several feet of soil and are not exposed until some type of earthwork is performed. Therefore, the following mitigation measure will be required to assist in the identification of any potential discoveries.



**Mitigation Measures:**

MM- TRIBAL-1The project proponent shall provide for a Morongo Band of Mission Indians Tribal Resource Monitor(s) to be present during all required ground disturbing activities pertaining to the project.

### 3.18 UTILITIES AND SERVICE SYSTEMS

<i>Would the Project:</i>	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?			■	
b. Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?			■	
c. Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?			■	
d. Have sufficient water supplies available to serve the Project from existing entitlements and resources, or are new or expanded entitlements needed?			■	
e. Result in a determination by the wastewater treatment provider, which serves or may serve the Project that it has adequate capacity to serve the Project's projected demand in addition to the provider's existing commitments?			■	
f. Be served by a landfill with sufficient permitted capacity to accommodate the Project's solid waste disposal needs?			■	
g. Comply with federal, state, and local statutes and regulations related to solid waste?			■	

#### **3.18(a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?**

**Determination: Less Than Significant Impact.**

*Source: City of Banning General Plan, Water, Wastewater and Utilities Element*

#### **Plans, Policies, or Programs (PPP)**

The following applies to the Project and would reduce impacts relating to wastewater treatment requirements. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

- PPP 3.18-1 As per Title 16 of the City of Banning Municipal Code Subdivision section, prior to recordation of a Final Map, improvement plans shall be submitted to the City Engineer that provide for sewage disposal by connection to an existing collection

system capable of accepting the waste load. The collection system shall meet the City of Banning Utility Department standards and requirements.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

Wastewater treatment and collection services would be provided to the Project site by the City of Banning Public Works and Utilities Department. The Banning Public Works and Utilities Department is required to operate all of its treatment facilities in accordance with the waste treatment and discharge standards and requirements set forth by the Colorado River Regional Water Quality Control Board.

Wastewater generated by the Project will be treated at the Banning Waste Water Treatment Plant. The Project would not install or utilize septic systems or alternative wastewater treatment systems, therefore, the Project would have no potential to exceed the applicable wastewater treatment requirements established by the Colorado River Regional Water Quality Control Board or Banning Waste Water Treatment Plan specifications. Accordingly, impacts would be less than significant.

---

**3.18(b) *Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?***

---

**Determination: Less Than Significant Impact.**

*Sources: Project Application Materials,*

#### **Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

The Project would construct an on-site network of water and sewer pipes which would connect to the existing 8-inch water line in Wilson Street and 8-inch sewer line in Wilson Street. The installation of water and sewer lines as proposed by the Project would result in physical impacts to the surface and subsurface of the Project site. These impacts are considered to be part of the Project's construction phase and are evaluated throughout this Initial Study Checklist. In instances where impacts have been identified for the Project's construction phase, Plans, Policies, Programs, or Standard Conditions (PPP), Project Design Features (PDF), or development recommendations cited in the EnGen report dated, April 4, 2014, these measures are intended to reduce impacts to less-than-significant levels. Accordingly, additional measures beyond those identified throughout this Initial Study Checklist would not be required.

Based on the above analysis, impacts would be less than significant and no mitigation measures are required.

---

**3.18(c) *Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?***

---

**Determination: Less Than Significant Impact.**

*Sources: City of Banning General Plan, Water, Wastewater and Utilities Element*

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, or Programs applicable to the Project relating to this issue

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

Drainage patterns will generally follow the existing frontage Wilson Street public street gutter and remain in the existing condition.

The construction of the on-site drainage facilities would result in physical impacts to the surface and subsurface of the Project site. Project engineers shall be required to design the WQMP basins to retain the 100 yr – 3-hour storm event provided on site. These impacts are part of the Project's construction phase and are evaluated in the appropriate sections of this Initial Study/Mitigated Negative Declaration document. In instances where impacts have been identified for the Project's construction phase, Plans, Policies, Programs, or Standard Conditions (PPP), Project Design Features (PDF), or Mitigation Measures are required to reduce impacts to less-than-significant levels. Accordingly, additional measures beyond those identified throughout this Initial Study Checklist would not be required.

Based on the above analysis, impacts would be less than significant and no mitigation measures are required.

---

**3.18(d) *Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?***

---

**Determination: Less Than Significant Impact.**

*Sources: City of Banning General Plan, Water, Wastewater and Utilities Element)*

**Plans, Policies, or Programs (PPP)**

The following applies to the Project and would reduce impacts relating to water supply requirements. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

- PPP 3.18-2 Prior to recordation of a Final Map, required improvement plans shall be submitted to the satisfaction of the City Engineer that provide for the installation of a domestic water supply and distribution system that meets the requirements per the City of Banning Public Services and Utility requirements.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

Utilities are available at the project site. The service providers for water, sewer, electricity and other utilities have facilities in the immediate vicinity of the site, and will collect connection and usage fees to balance for the cost of providing services. The project will control on-site storm water to the satisfaction of the City Engineer (please see Hydrology, above). The City's solid waste hauler will continue to implement the requirements of AB 939, requiring the reduction of the solid waste stream. The construction of the proposed project is expected to have less than significant impacts on utility providers.

---

**3.18(e)** *Result in a determination by the wastewater treatment provider which serves or may serve the Project that it has adequate capacity to serve the Project's projected demand in addition to the provider's existing commitments?*

---

**Determination: Less Than Significant Impact.**

*Sources: City of Banning General Plan, Water, Wastewater and Utilities Element*

#### **Plans, Policies, or Programs (PPP)**

The following applies to the Project and would reduce impacts relating to water supply requirements. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

- PPP 3.18-3 Prior to the issuance of a grading permit, the Project proponent shall be required to provide written verification to the City of Banning Public Works Department that that adequate capacity exists at the City of Banning Water Control Plant to serve the Project. All water and sewer connection fees shall be paid prior to the issuance of a building permit.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Impact Analysis**

Sanitary sewer service to the Project site would be provided by the Banning Waste Water Treatment Plant.

Based on the above analysis, with implementation of PPP 3.18-3, impacts would be less than significant and no mitigation measures are required.

---

**3.18(f) *Be served by a landfill with sufficient permitted capacity to accommodate the Project's solid waste disposal needs?***

---

**Determination: Less Than Significant Impact.**

*Sources: (City of Banning General Plan)*

**Plans, Policies, or Programs (PPP)**

There are no Plans, Policies, Programs, or Standard Conditions applicable to the Project relating to this issue

**Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

**Impact Analysis**

**Construction Related Impacts**

Waste generated during the construction phase of the Project would primarily consist of discarded materials from the construction of streets, common areas, infrastructure installation, and other project-related construction activities. The City of Banning Contracts with Waste Management Inland Empire for solid waste and disposal services. Construction debris and waste is taken to the Lamb Canyon Sanitary Land fill, El Sobrante Landfill and the Badlands Landfill for disposal.

The California Integrated Waste Management Board (CIWMB) database cites that Lambs Canyon Sanitary Landfill occupies an area of 1,088 acres for all of its land fill operations and has a total permitted disposal volume of 23,601,596 cubic yards and permit to accept a maximum of 1,900 ton of solid waste per day. CIWMB estimates that that the Lamb Canyon Sanitary Landfill had a remaining capacity of 16,926,000 cubic yards in 1998. The El Sobrante Landfill operated by Waste Management encompasses a total of 1,322 acres and has a total permitted disposal volume of 184,930,000 cubic yards. On a daily basis, this landfill is permitted to accept a maximum of 10,000 tons of solid waste. CIWMB estimates that as of 2001, the El Sobrante Landfill has an estimated remaining capacity of 3,674,267 cubic yards.

*Operational Related Impacts*

Solid waste generated during long-term operation of the Project would be disposed at the Lamb Canyon Sanitary Landfill and/or the El Sobrante Landfill. During long-term operation, the Project's solid waste would be minuscule amount of the daily permitted disposal capacity at the Lamb Canyon Sanitary Landfill and El Sobrante Landfill.

These landfills receive well below their maximum permitted daily disposal volume and solid waste generated by the Project is not anticipated to cause these landfills to exceed their maximum permitted daily disposal volume. Because the proposed Project would generate a relatively small



amount of solid waste per day, as compared to the permitted daily capacities for Lamb Canyon Sanitary Landfill and the El Sobrante Landfill, these regional landfill facilities would have sufficient daily capacity to accept solid waste generated by the Project.

Based on the above analysis, impacts would be less than significant and no mitigation measures are required.

---

**3.18(g) *Comply with federal, state, and local statutes and regulations related to solid waste?***

---

**Determination: Less Than Significant Impact.**

*Sources: City of Banning General Plan*

**Plans, Policies, or Programs (PPP)**

The following applies to the Project and would reduce impacts relating to solid waste. This measure will be included in the project's Mitigation Monitoring and Reporting Program:

PPP 3.18-4     The California Waste Management Act (AB 939) requires municipalities to reduce the amount of waste it sends to landfills by 50%. The Project shall participate in established Citywide recycling programs in response to AB 92. Individuals may also participate through privately run recycling operators.

**Impact Analysis**

The California Integrated Waste Management Act established an integrated waste management system that focused on source reduction, recycling, composting, and land disposal of waste. In addition, the Act established a 50% waste reduction requirement for cities and counties by the year 2000, along with a process to ensure environmentally safe disposal of waste that could not be diverted.

The Project's proponent would be required to coordinate with the waste hauler to develop collection of recyclable materials for the Project on a common schedule as set forth in applicable local, regional, and State programs. Recyclable materials that would be recycled by the Project include paper products, glass, aluminum, and plastic.

Additionally, the Project's waste hauler would be required to comply with all applicable local, State, and Federal solid waste disposal standards, thereby ensuring that the solid waste stream to the landfills that serve the Project are reduced in accordance with existing regulations.

Based on the above analysis, with implementation of PPP 3.18-4, impacts would be less than significant and no mitigation measures are required.



### 3.19 MANDATORY FINDINGS OF SIGNIFICANCE

<i>Would the Project:</i>	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Does the Project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?		■		
b. Does the Project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a Project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?		■		
c. Does the Project have environmental effects, which will cause substantial adverse effects on human beings, either directly or indirectly?			■	

#### Impact Analysis

**3.19(a)** *Does the Project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?*

**Determination:** Less Than Significant Impact with Mitigation Incorporated.

*Source: This Initial Study Checklist.*

As noted in the analysis throughout this Initial Study Checklist/Mitigated Negative Declaration document, the following apply to the Project and would reduce impacts relating to this issue.

#### Plans, Policies, or Programs (PPP)

PPP 3.4-1, PPP 3.4-2, and PPP 3.5-1 shall apply.

#### **Project Design Features (PDF)**

There are no Project Design Features applicable to the Project relating to this issue.

#### **Mitigation Measures (MM)**

MM GEO-1 shall apply

#### **Impact Analysis**

All impacts to the environment, including impacts to habitat for fish and wildlife species, fish and wildlife populations, plant and animal communities, rare and endangered plants and animals, and historical and pre-historical resources were evaluated as part of this Initial Study Checklist.

In instances where impacts have been identified, the Plans, Policies, or Programs, Project Design Features, or Mitigation Measures listed above are required to reduce impacts to less than significant levels. Therefore, the Project would not substantially degrade the quality of the environment.

---

**3.19(b)** *Does the Project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a Project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?*

---

**Determination: Less Than Significant with Mitigation Incorporated.**

*Source: This Initial Study Checklist.*

As noted in the analysis throughout this Initial Study Checklist/Mitigated Negative Declaration document, the following apply to the Project and would reduce impacts relating to this issue. These measures will be included in the Project's Mitigation Monitoring and Reporting Program:

#### **Plans, Policies, or Programs (PPP)**

All Plans, Policies, or Programs (PPP) identified in this Initial Study Checklist/Mitigated Negative Declaration shall apply.

#### **Project Design Features (PDF)**

All Project Design Features (PDF) identified in this Initial Study Checklist/Mitigated Negative Declaration shall apply.

#### **Mitigation Measures (MM)**

All Project Mitigation Measures (MM) identified in this Initial Study Checklist/Mitigated Negative Declaration shall apply.

#### **Impact Analysis**

As discussed throughout this Initial Study Checklist, implementation of the proposed Project has the potential to result in effects to the environment that are individually limited, but cumulatively considerable. In instances where impacts have been identified, the Plans, Policies, or Programs, Project Design Features, or Mitigation Measures, listed above are required to reduce impacts to less than significant levels. Therefore, the Project would not contribute to environmental effects that are individually limited, but cumulatively considerable.

---

**3.19(c) *Does the Project have environmental effects which would cause substantial adverse effects on human beings, either directly or indirectly?***

---

**Determination: Less Than Significant Impact.**

As noted in the analysis throughout this Initial Study Checklist/Mitigated Negative Declaration document, the following apply to the Project and would reduce impacts relating to this issue. These measures will be included in the Project's Mitigation Monitoring and Reporting Program:

**Plans, Policies, or Programs (PPP)**

The following shall apply:

PPP 3.1-1 and 3.1.2  
 PPP 3.3-1 and 3.3-2  
 PPP 3.4-1  
 PPP 3.5-1  
 PPP 3.6-1 and 3.6-2  
 PPP 3.7-1  
 PPP 3.8-1  
 PPP 3.9-1 through 3.9-4  
 PPP 3.12-1 and 3.12-2  
 PPP 3.14-1 through 3.14-3  
 PPP 3.16-1  
 PPP 3.17-1 and 3.17-2  
 PPP 3.18-1 through 3.18-4

**Project Design Features (PDF)**

The following shall apply:

PDF 3.1-1 and 3.1-2  
 PDF 3.8-1  
 PDF 3.9-1

**Mitigation Measures (MM)**

The following shall apply:

MM AIR-1  
 MM GEO-1

MM NOISE-1  
MM NOISE-2  
MM TRIBAL-1

### **Impact Analysis**

The Project's potential to result in environmental effects that could adversely affect human beings, either directly or indirectly, has been discussed throughout this Initial Study Checklist/Mitigated Negative Declaration.

In instances where impacts have been identified, the Plans, Policies, or Programs, Project Design Features and Mitigation Measures are required to reduce impacts to less-than-significant levels. Therefore, the Project would not result in environmental effects which would cause substantial adverse effects on human beings, either directly or indirectly.

#### 4.0 REFERENCES

California Air Resources Board (CARB) Handbook, 2009.

<http://www.arb.ca.gov/homepage.htm>

California Environmental Quality Act (CEQA) Guidelines. [http://opr.ca.gov/m\\_ceqa.php](http://opr.ca.gov/m_ceqa.php)

California Environmental Quality Act (CEQA) Air Quality Handbook.

[http://opr.ca.gov/m\\_ceqa.php](http://opr.ca.gov/m_ceqa.php)

City of Banning General Plan, 2006 [www.ci.banning.ca.us](http://www.ci.banning.ca.us)

City of Banning General Plan EIR, 2006 [www.ci.banning.ca.us](http://www.ci.banning.ca.us)

California Department of Toxic Substances Control, [www.dtsc.ca.gov](http://www.dtsc.ca.gov)

Countywide Integrated Waste Management Plan [www.rivcowom.org](http://www.rivcowom.org)

Flood Insurance Rate Maps, Federal Emergency Management Agency, <https://msc.fema.gov>

South Coast Air Quality Management District, [www.aqmd.gov](http://www.aqmd.gov).

South Coast Air Quality Management District, Final 2012 Air Quality Management Plan. [www.aqmd.gov](http://www.aqmd.gov)

Southern California Association of Governments, 2012-2035 Regional Transportation Plan/Sustainable Communities Strategy.

<http://rtpscs.scag.ca.gov/Pages/default.aspx>

Western Riverside County Multiple Species Habitat Conservation Plan.

<http://www.rctlma.org/mshcp/>

## 5.0 REPORT PREPARATION PERSONNEL

### LEAD AGENCY:

City of Banning  
Community Development Department  
99 East Ramsey Street  
Banning, CA 92220

Mark de Manincor, Contract Planner



## Exhibit C

Mitigation Monitoring Report and Program

TTM 36710  
 Mitigation, Monitoring and Reporting Program (MMRP)  
 August 11, 2019  
 Page 1

## EXHIBIT C

Mitigation Measures	Timing	Verification		
		Department	Signature	Date
<b>Aesthetics</b>				
Plans, Policies, or Programs (PPP)				
Project Design Features (PDF)				
Mitigation Measures (MM)				
PPP 3.1-1 Banning Zoning Code: As required by the City of Banning Zoning Regulations, Table 17.08.030, residential building heights shall not exceed thirty-five (35) feet in height.				
PPP 3.1-2 The Project site is within Zone D of the Banning Municipal Airport Compatibility Map. Consequently, object heights are limited to 35 feet.				
PDF 3.1-1 The project site will be a Planned Unit Development (PUD) and incorporate specific land use and Right-of-Way (ROW) design features unique to the Project.				
PDF 3.1 -2 Any Public Street Lighting shall not exceed 35 feet in height.				
<b>Air Quality</b>				
Plans, Policies, or Programs (PPP)				
Project Design Features (PDF)				
Mitigation Measures (MM)				
PPP 3.3-1 The Project is required to comply with the provisions of South Coast Air Quality Management District Rule 402. A person	During Grading	Engineering		

TTM 36710, PUD 17-9507, DR 15-7004  
 Mitigation, Monitoring and Reporting Program  
 September 6, 2017  
 Page 2

Mitigation Measure		Timing	Department	Signature	Date
	shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property.				
PPP 3.3-2	The Project is required to comply with Rule 403 "Fugitive Dust." Rule 403 requires implementation of best available dust control measures during construction activities that generate fugitive dust, such as earth moving and stockpiling activities, grading, and equipment travel on unpaved roads.	During Grading	Engineering		
MM AIR-1	To be compliant with CALEEMod modeling, the equipment planned to be used on a peak day during site preparation and grading operations will disturb no more than 5 acres in a day.	During Grading	Engineering		
<b>Biological Resources</b>					
Plans, Policies, or Programs (PPP)					
Project Design Features (PDF)					
Mitigation Measures (MM)					
PPP 3.4-1	The Project is required to pay Fish and	Within 5 days of	Planning		

TTM 36710, PUD 17-9507, DR 15-7004  
 Mitigation, Monitoring and Reporting Program  
 September 6, 2017  
 Page 3

Mitigation Measure	Timing	Department	Signature	Date
Wildlife fees to California Department of Fish and Wildlife.	City Council Approval			
<b>Cultural Resources</b>				
Plans, Policies, or Programs (PPP) Project Design Features (PDF) Mitigation Measures (MM)				
PPP 3.5-1 The project is required to comply with the applicable provisions of California Health and Safety Code §7050.5, Public Resources Code §5097 et. seq., and provisions of AB 52 concerning consideration of Tribal Cultural Values in determination of project impacts and mitigation.				
<b>Geology and Soils</b>				
Plans, Policies, or Programs (PPP) Project Design Features (PDF) Mitigation Measures (MM)				
PPP 3.6-1 The project is required to comply with the California Building Standards Code and City Building Code to preclude significant adverse effects associated with seismic hazards.	During Construction	Building and Safety		
PPP 3.6-2 Prior to grading permit issuance, the Project Proponent shall prepare a <i>Stormwater Pollution Prevention Plan</i> . Project contractors shall be required to	Prior to Grading	Engineering		

TTM 36710, PUD 17-9507, DR 15-7004  
 Mitigation, Monitoring and Reporting Program  
 September 6, 2017  
 Page 4

Mitigation Measure	Timing	Department	Signature	Date
ensure compliance with the Stormwater Pollution Prevention Plan and permit periodic inspection of the construction site by City of Banning staff and the state water resources control board staff.				
MM- GEO -1 Developer shall adhere to the recommendations cited in the EnGEN Corp Geotechnical Engineering Study with regard to the project's development per Section 8.0.	During Grading	Engineering		
<b>Greenhouse Gas Emissions</b>				
Plans, Policies, or Programs (PPP)				
Project Design Features (PDF)				
Mitigation Measures (MM)				
PPP 3.7-1 Prior to issuance of the first residential building permit, the Project Applicant shall submit energy usage calculations in the form of a Title 24 Compliance Report to the City of Banning Building & Safety Department showing that the Project will be constructed in compliance with the most recently adopted edition of the applicable California Building Code Title 24 requirements.	During Plan Check process	Building and Safety		
<b>Hazards and Hazardous Materials</b>				
Plans, Policies, or Programs (PPP)				
Project Design Features (PDF)				

TTM 36710, PUD 17-9507, DR 15-7004  
 Mitigation, Monitoring and Reporting Program  
 September 6, 2017  
 Page 5

Mitigation Measure		Timing	Department	Signature	Date
Mitigation Measures (MM)					
PPP 3.8-1	The Project is subject all applicable federal, state, and local laws and regulations regarding hazardous materials, including but not limited requirements imposed by the Environmental Protection Agency, California Department of Toxic Substances Control, South Coast Air Quality Management District, and the Santa Ana Regional Water Quality Control Board.				
PDF 3.8-1	The Applicant is proposing a Planned Unit Development (PUD) to permit a housing density of 4.5 dwelling units per acre.				
<b>Hydrology and Water Quality</b>					
Plans, Policies, or Programs (PPP)					
Project Design Features (PDF)					
Mitigation Measures (MM)					
PPP 3.9-1	Prior to grading permit issuance, the Project Proponent shall obtain a National Pollutant Discharge Elimination System permit from the State Resources Control Board. Evidence that an National Pollutant Discharge Elimination System permit has been issued shall be provided to the City of Banning prior to issuance of the first grading permit.	Prior to Grading	Engineering		
PPP 3.9-2	Prior to grading permit issuance, the	Prior to Grading	Engineering		



TTM 36710, PUD 17-9507, DR 15-7004  
 Mitigation, Monitoring and Reporting Program  
 September 6, 2017  
 Page 6

Mitigation Measure		Timing	Department	Signature	Date
	Project Proponent shall prepare a Storm water Pollution Prevention Plan. Project contractors shall be required to ensure compliance with the Storm water Pollution Prevention Plan and permit periodic inspection of the construction site by City of Jurupa Valley staff or its designee to confirm compliance.				
PPP 3.9-3	During construction, Project contractors shall be required to ensure compliance with the Project's Water Quality Management Plan associated with the Project and permit periodic inspection of the construction site by City of Banning staff or its designee to confirm compliance.	During Construction	Engineering		
PPP 3.9-4	The Project shall be in compliance with Chapter 13.24 Storm Water Management System of the Banning Municipal Code.				
PDF 3.9-1	Tentative Tract Map No. 36710 provides for 64,469 cubic foot (1.48 acre foot) water quality basin and infiltration. These areas shall be designed to manage water quality runoff to the satisfaction of the City Engineer and in accordance with the United Engineering Group Preliminary Drainage Report, September 6, 2016.	Prior to Certificate of Occupancy	Engineering		

TTM 36710, PUD 17-9507, DR 15-7004  
 Mitigation, Monitoring and Reporting Program  
 September 6, 2017  
 Page 7

Mitigation Measure	Timing	Department	Signature	Date
<b>Noise</b>				
Plans, Policies, or Programs (PPP)				
Project Design Features (PDF)				
Mitigation Measures (MM)				
PPP 3.12-1 In order to ensure compliance with the Banning Municipal Code Chapter 8.44 Noise Regulations, prior to the issuance of a grading permit, the developer is required to submit a construction-related noise mitigation plan to the City for review and approval. The plan must depict the location of construction equipment and how the noise from this equipment will be mitigated during construction of this project. In addition, the plan shall require that the following notes are included on grading plans and building plans. Project contractors shall be required to ensure compliance with the notes and permit periodic inspection of the construction site by City of Banning staff or its designee to confirm compliance. These notes also shall be specified in bid documents issued to prospective construction contractors.  a) All construction activities shall comply with Chapter 8.44 (Noise Regulations) of the City of Banning Municipal Code.  b) Construction contractors shall equip all construction equipment, fixed or mobile,				

TTM 36710, PUD 17-9507, DR 15-7004  
 Mitigation, Monitoring and Reporting Program  
 September 6, 2017  
 Page 8

Mitigation Measure	Timing	Department	Signature	Date
<p>with properly operating and maintained mufflers, consistent with manufacturers' standards.</p> <p>c) All stationary construction equipment shall be placed in such a manner so that emitted noise is directed away from any sensitive receptors adjacent to the Project site.</p> <p>d) Construction equipment staging areas shall be located the greatest distance between the staging area and the nearest sensitive receptors.</p>				
<p>PPP 3.12-2 The City shall require building setbacks, the installation of wall and window insulation, soundwalls, earthen berms, and/or other mitigation measures in areas exceeding the City's noise standards for private development projects as they occur.</p>				
<p>MM- NOISE- 1 Highly noise-sensitive outdoor non-residential uses are prohibited.</p>	<p>During construction and operation</p>	<p>Developer, Owner</p>		
<p>MM- NOISE- 2 The following notice shall be provided to all potential purchasers of the property, and shall be recorded as a deed notice.</p> <p>NOTICE OF AIRPORT IN VICINITY</p> <p>This property is presently located in the</p>	<p>Prior to sales of property</p>	<p>Owner</p>		

TTM 36710, PUD 17-9507, DR 15-7004  
 Mitigation, Monitoring and Reporting Program  
 September 6, 2017  
 Page 9

Mitigation Measure	Timing	Department	Signature	Date
vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances [can vary from person to person. You may wish to consider what airport annoyances], if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you. Business & Professions Code Section 11010 (b) (13) (A)				
<b>Public Services</b>				
Plans, Policies, or Programs (PPP)				
Project Design Features (PDF)				
Mitigation Measures (MM)				
PPP 3.14-1 The Project shall comply with applicable City's Development Impact Fees which requires payment of a development mitigation fee to assist in providing funds to offset the incremental increase in the demand for public services, parks and open space that would be created by the Project. Prior to the issuance of building permits. The Project Applicant shall pay fees in accordance with the City of Banning Municipal Code Requirements.				

TTM 36710, PUD 17-9507, DR 15-7004  
 Mitigation, Monitoring and Reporting Program  
 September 6, 2017  
 Page 10

Mitigation Measure		Timing	Department	Signature	Date
PPP 3.14-2	Prior to the issuance of building permits, the Project Applicant shall pay required development impact fees to the Banning Unified School District following protocol for impact fee collection.				
<b>Transportation/Traffic</b>					
Plans, Policies, or Programs (PPP)					
Project Design Features (PDF)					
Mitigation Measures (MM)					
PPP 3.16-1	Prior to the issuance of any building permits, the Project Proponent shall make pay the City's Traffic Control Facility Fee per household unit constructed.				
<b>Tribal Cultural Resources</b>					
Plans, Policies, or Programs (PPP)					
Project Design Features (PDF)					
Mitigation Measures (MM)					
PPP 3.17-1	If human remains are encountered during the undertaking, State Health and Safety Code Section 7050.5 states that no further disturbance shall occur until the County Coroner has made a determination of the origin and disposition pursuant to Public Resources Code Section 5097.98. The County Coroner must be notified of the find immediately. If the remains are determined to be prehistoric, the Coroner will notify the Native American Heritage	During Ground Disturbance and Grading	Engineering, Tribal Monitor		

TTM 36710, PUD 17-9507, DR 15-7004  
 Mitigation, Monitoring and Reporting Program  
 September 6, 2017  
 Page 11

Mitigation Measure	Timing	Department	Signature	Date
Commission (NAHC), which will determine and notify a Most Likely Descendant (MLD). With the permission of the landowner or his/her authorized representative, the MLD may inspect the site of the discovery. The MLD shall complete the inspection within 48 hours of notification by the NAHC.				
PPP 3.17-2 Banning Zoning Code: As required by the City of Banning Zoning Regulations. Section 18.18.120 D, discoveries made of archaeological or paleontological interest shall stop operations until a qualified archeologist or paleontologist has assessed the significance of the find.				
MM-TRIBAL-1The project proponent shall provide for a Morongo Band of Mission Indians Tribal Resource Monitor(s) to be present during all required ground disturbing activities pertaining to the project.				
<b>Utilities and Service Systems</b>				
Plans, Policies, or Programs (PPP)				
Project Design Features (PDF)				
Mitigation Measures (MM)				
PPP 3.18-1 As per Title 16 of the City of Banning Municipal Code Subdivision section, prior to recordation of a Final Map,				

TTM 36710, PUD 17-9507, DR 15-7004  
 Mitigation, Monitoring and Reporting Program  
 September 6, 2017  
 Page 12

Mitigation Measure		Timing	Department	Signature	Date
	improvement plans shall be submitted to the City Engineer that provide for sewage disposal by connection to an existing collection system capable of accepting the waste load. The collection system shall meet the City of Banning Utility Department standards and requirements.				
PPP 3.18-2	Prior to recordation of a Final Map, required improvement plans shall be submitted to the satisfaction of the City Engineer that provide for the installation of a domestic water supply and distribution system that meets the requirements per the City of Banning Public Services and Utility requirements.				
PPP 3.18-3	Prior to the issuance of a grading permit, the Project proponent shall be required to provide written verification to the City of Banning Public Works Department that that adequate capacity exists at the City of Banning Water Control Plant to serve the Project. All water and sewer connection fees shall be paid prior to the issuance of a building permit.				
PPP 3.18-4	The California Waste Management Act (AB 939) requires municipalities to reduce the amount of waste it sends to landfills by 50%. The Project shall participate in				



TTM 36710, PUD 17-9507, DR 15-7004  
Mitigation, Monitoring and Reporting Program  
September 6, 2017  
Page 13

Mitigation Measure	Timing	Department	Signature	Date
established Citywide recycling programs in response to AB 92. Individuals may also participate through privately run recycling operators.				

## **Exhibit D**

Conditions of Approval



## COMMUNITY DEVELOPMENT DEPARTMENT

### EXHIBIT D

99 E. Ramsey Street · P.O. Box 998 · Banning, CA 92220-0998 · (951) 922-3125 · Fax (951) 922-3128

PROJECT #:	Tentative Tract Map 36710 and Variance 19-3001
SUBJECT:	Conditions of Approval for Planning Commission Resolution 2019-08
APPLICANT:	Beau Cooper, United Engineering Group
LOCATION:	APN: 534-183-014, 534-200-004, 534-200-008, 534-200-047

**\* All fair share agreements, covenant agreements and agreements subject to recordation will be subject to review and approval by the City Attorney and will include appropriate enforcement provisions by the City and be properly securitized.**

#### Community Development Department:

#### **General Requirements**

1. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, lawsuits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the action of, or any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the project, whether such Actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivisions Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily

Exhibit B  
Conditions of Approval  
TTM 36710, VAR 19-3001  
Page 2 of 16

incurred by the City in the course of the defense. City shall promptly notify the applicant of any Action brought and City shall cooperate with applicant in the defense of the Action.

2. The issuance of these Conditions of Approval does not negate the requirements of the Engineering/Public Works Department or submittal, review, and approval of: Street improvement plans, signing and striping plans, grading plans, storm drain improvement plans, street lighting plans, water, sewer, and electrical improvement plans, or other plans as deemed necessary by the City Engineer.
3. Approval of Tentative Tract 36710 and Variance 19-3001 shall be for a period of two (2) years from the date of City Council approval. All Conditions of Approval must be met on or before the expiration date, or the applicant must request an extension of time at least thirty (30) days prior to the expiration date; otherwise, the approval shall expire and become null and void.
4. A copy of the signed resolution of approval or Community Development Director's letter of approval and all conditions of approval and any applicable mitigation measures shall be reproduced in legible form on the grading plans, building and construction plans, and landscape and irrigation plans submitted for review and approval as required by the reviewing department.
5. The design of all lots shall meet the minimum development requirements contained in the City's Zoning Ordinance for the Low Density Residential (LDR) Zoning District.
6. A six-foot tall decorative block wall shall be constructed around the perimeter of the subdivision, between houses and along all street facing side yards. View fencing, such as wrought iron, shall be constructed along detention basin areas. The applicant shall apply an anti-graffiti coating to all perimeter block walls [added at the Planning Commission meeting of 5/1/19].
7. Prior to development an application shall be submitted to the Planning Department for design review and approval, in accordance with the provisions and requirements of the Banning Municipal Code Section 17.56 (Design Review).
8. Applicant shall pay all development fees adopted by the City in effect at the time of issuance of any building permits, which shall include but not be limited to: TUMF, MSHCP, police and fire safety developer fees, water and sewer fees, park land dedication fees, and electric meter installation fees etc. Project proponent shall provide written evidence to the City that school mitigation fees have been paid or other arrangements acceptable to the Banning Unified School District have been met.
9. A copy of the final grading plan, approved by the Department of Public Works, Engineering Division, shall be submitted to the Planning Department for review and

Exhibit B  
Conditions of Approval  
TTM 36710, VAR 19-3001  
Page 3 of 16

approval of the landscaping and erosion control plans when graded cut slopes exceed five (5) feet in height and fill slopes exceed three (3) feet in height.

10. The following building setback lines shall be delineated on the composite development plan submitted for building permits:

a. Front yard - Minimum 20 feet.

b. Side yard (interior lot) - Minimum 10 feet (single-story: measured between the furthest projection of the wall to the property line).

Side yard setbacks for two-story dwellings shall be staggered per Section 17.08.240(E) of the zoning ordinance.

c. Side yard (corner lot - street side) – Minimum 15 feet.

d. Side yard (corner lot – abutting interior lot) - Minimum 10 feet (measured between the furthest projection of the wall to the property line)

e. Rear yard – minimum 15 feet.

11. The developer shall contact the U.S. postal Service to determine the appropriate type and location of mailboxes.

12. The applicant shall install slate, concrete tile, clay tile, or equal roofing material approved by the Planning Department on all dwelling units within the subject property.

13. A trailer, used as an office by the property owner or his designee, may be permitted on the site during construction for a period not to exceed six (6) months. Prior to issuance of a building permit for any residential unit, said trailer shall be subject to a Temporary Use Permit (TUP) reviewed and approved by the Planning Department.

14. Prior to the issuance of any Building Permits, the project proponent shall submit to the City's Planning Department for review and approval: (1) three (3) copies of a drought-tolerant landscape plan and irrigation plans prepared by a licensed landscape architect. Said plan shall also depict the proposed placement and materials for a 6-foot high decorative block wall with decorative cap to be established along the perimeter. The drought-tolerant landscape plan shall include the following:

a. The location, type, size and quantity of vegetation to be installed, and a date by which the landscaping shall be completed.

b. Required drought-tolerant slope planting: Slope planting shall be required for the surface of all cut slopes of three (3) feet or greater in height and fill slopes

Exhibit B  
 Conditions of Approval  
 TTM 36710, VAR 19-3001  
 Page 4 of 16

more than two (2) feet in height. Said slopes shall be protected against damage from erosion by providing jute netting and planting with, ground cover plants or grass, except that grass will not exceed 25% of the total planting area on the slope face.

- i. All slopes exceeding three (3) feet in vertical height shall also be planted with shrubs, spaced at distances not to exceed five (5) feet on center; or, trees spaced at distances not to exceed ten (10) feet on center; or a combination of shrubs and trees.
  - ii. Slopes exceeding five (5) feet in vertical height shall be planted with a combination of drought-tolerant trees, shrubs and groundcover.
  - iii. Drought-tolerant slope planting as required by B (1) and (2), above, shall consist of the following sizes and quantities:
    - a) Trees: 30% — 24- inch box; 35% — 15-gallon; 25% - five gallon; 10% -one gallon.
    - b) Shrubs: 60% — five gallon; 40%—one gallon.
    - c) Groundcover: 100% coverage from flats planted 18-inch on-center.
  - iv. The approved landscape plan shall be installed prior to the issuance of a Certificate of Occupancy for each single-family residence to be constructed within the subdivision.
15. Prior to the issuance of a Certificate of Occupancy for each single-family residence constructed within TTM 36710, the applicant shall submit to the City for review and approval three (3) copies of a detailed landscape and irrigation plan (comprised of xeriscape plant material) indicating type, species and location of the following minimum number of drought tolerant, multi—branched trees on each lot adjacent to the street right—of—way (all trees shall be planted with root barriers):
- Cul-de-sac lots –1 tree; minimum 24" box
  - Interior lot— 2 trees; one 24" box, one 15—gallon
  - Corner lot — 3 trees; two 24" box and one 15—gallon.
  - The Plan shall be forwarded to a Landscape Architect for review and the applicant shall pay all fees associated with the review process. The approved landscape plan shall be implemented / installed prior to the issuance of a Certificate of Occupancy for each single-family residence constructed within TTM 36939. (Submit landscape and irrigation plans as soon as possible to allow sufficient time for a Landscape Architect to review same).
  - The landscaping for the street parkways, public lots, and other public areas shall be installed prior to occupancy of the first unit.



Exhibit B  
 Conditions of Approval  
 TTM 36710, VAR 19-3001  
 Page 5 of 16

16. A six-(6) foot high chain link fence must be maintained around the perimeter of the site during all phases of construction.
17. Developer shall meet all requirements of responsible agencies, including but not limited to: Southern California Gas Company, Southern California Edison Company and the Riverside County Flood Control and Water Conservation District (RCFC and WCD).
18. The Project is required to comply with the provisions of South Coast Air Quality Management District Rule 402, A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property.
19. The Project is required to comply with regional rules that assist in reducing short-term air pollutant emissions. SCAQMD Rule 403 requires that fugitive dust be controlled with best-available control measures so that the presence of such dust does not remain visible in the atmosphere beyond the property line of the emission source. SCAQMD Rule 403 requires implementation of dust suppression techniques to prevent fugitive dust from creating a nuisance off site. Applicable dust suppression techniques from Rule 403 are summarized below:
  - Apply nontoxic chemical soil stabilizers according to manufactures' specifications to all inactive construction areas (previously graded areas inactive for 10 days or more).
  - Water active sites at least twice daily. (Locations where grading is to occur will be thoroughly watered prior to earthmoving.)
  - Cover all trucks hauling dirt, sand, soil, or other loose materials, or maintain at least 0.6 m (2 ft.) of freeboard (vertical space between the top o the load and top of the trailer) in accordance with the requirements of California Vehicle Code (CVC) Section 23114.
  - Pave construction access roads at least 30 m (100 ft.) onto the site from the main road.
  - Reduce traffic speeds on all unpaved roads to 15 mph or less.

The applicable Cal/Recycle Sustainable (Green) Building Program Measures are:

- Recycle/reuse at least 50 percent of the construction material that are rapidly renewable or resource-efficient, and recycled and manufactured in an environmentally friendly way for at least 10 percent of the project, as defined on the California Department of Resources Recycling and Recovery (CalRecycle) website:  
[www.calrecycle.ca.gov](http://www.calrecycle.ca.gov)



Exhibit B  
 Conditions of Approval  
 TTM 36710, VAR 19-3001  
 Page 6 of 16

20. In the event that previously undocumented archaeological resources are identified during earthmoving activities, further construction work in the area should be diverted or halted until the nature and significance of the find can be assessed.
21. If human remains are encountered, State Health and Safety Code Section 7050.5 states that no further disturbance shall occur until the County Coroner has made a determination of origin and disposition pursuant to Public Resources Code Section 5097.98. The County Coroner must be notified of the find immediately. If the remains are determined to be prehistoric, the County Coroner will notify the Native American Heritage Commission (NAHC), which will determine and notify a Most Likely Descendant (MLD). With the permission of the landowner or his/her authorized representative, the MLD may inspect the site of the discovery. The MLD shall complete the inspection within 48 hours of notification by the NAHC. The MLD may recommend scientific removal and nondestructive analysis of human remains and items associated with Native American burials.

#### Mitigation

22. *Air Quality: to be compliant with CalEEMod modeling approved for the proposed project, the equipment planned to be used on a peak day during site preparation and grading operations will disturb no more than five acres in a day.*
23. *Geology and Soils: Developer shall adhere to the recommendations cited in the EnGEN Corp Geotechnical Engineering Study with regard to the project's development per Section 8.0*
24. *Noise: Highly noise-sensitive outdoor nonresidential uses are prohibited.*
25. *Noise: The following notice shall be provided to all potential purchasers of the property, and shall be recorded as a deed notice.*
  - a. *NOTICE OF AIRPORT IN VICINITY*  
*This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances (can vary from person to person. You may wish to consider what airport annoyances), if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you. Business & Professions Code Section 11010 (b) (13) (A).*

Exhibit B  
 Conditions of Approval  
 TTM 36710, VAR 19-3001  
 Page 7 of 16

26. *Tribal Cultural Resources: The project proponent shall provide for the Morongo Band of Mission Indians Tribal Resource Monitor(s) to be present during all required ground disturbing activities pertaining to the project.*

### **Public Works:**

#### **General Requirements**

27. A Public Works Encroachment Permit shall be required prior to commencement of any work within the public right-of-way. The contractor working within the public right-of-way shall submit proof of a Class "A" State Contractor's License, City of Banning Business License, and Liability Insurance. Any existing public improvements, or public improvements not accepted by the City that are damaged during construction shall be removed and replaced as determined by the City Engineer or his/her representative.
28. Prior to the issuance of any grading, construction, or public works permit by the City, the applicant shall obtain any necessary clearances and/or permits from the following agencies:
- Fire Marshal (access)
  - Public Works Department (grading permits, street improvement permits)
  - Riverside County Flood Control & Water Conservation District (storm drain)
  - California Regional Water Quality Control Board Colorado River Basin (RWQCB)
  - South Coast Air Quality Management District (SCAQMD)

*The applicant is responsible for meeting all requirements of permits and/or clearances from the above listed agencies. When the requirements include approval of improvement plans, the applicant shall furnish proof of such approvals when submitting improvements plans to the City.*

29. The following improvement plans shall be prepared by a Civil Engineer licensed by the State of California and submitted to the Engineering Division for review and approval. A separate set of plans shall be prepared for each line item listed below. Unless otherwise authorized in writing by the City Engineer, the plans shall utilize the minimum scale specified and shall be drawn on 24" x 36" Mylar film. Plans may be prepared at a larger scale if additional detail or plan clarity is desired (Note: the applicant may be required to prepare other improvement plans not listed here pursuant to improvements required by other agencies and utility purveyors):
- i. Rough Grading Plans 1" = 40' horizontal  
 (All Conditions of Approval shall be reproduced on last sheet of set)
  - ii. Haul Route Plans 1" = 40' horizontal
  - iii. Clearing Plans 1" = 50' horizontal  
 (Include construction fencing plan)

Exhibit B  
 Conditions of Approval  
 TTM 36710, VAR 19-3001  
 Page 8 of 16

iv.	Erosion Control & SWPPP, WQMP	1" = 40' Horizontal
	(Note: a, b, c & d shall be reviewed and approved concurrently)	
v.	Storm Drain Plans	1" = 40' Horizontal
vi.	Street Improvement Plans	1" = 40' Horizontal
		1" = 4' Vertical
vii.	Signing & Striping Plans	1" = 40' Horizontal
viii.	Precise Grading Plans	1" = 40' Horizontal
ix.	Landscaping Plans	1" = 20 Horizontal
x.	Water Improvement Plans	1" = 40' Horizontal
		1" = 4' Vertical
xi.	Sewer Improvement Plans	1" = 40' Horizontal
		1" = 4' Vertical

*Other engineered improvement plans prepared for City approval that are not listed herein shall be prepared in formats approved by the City Engineer prior to commencing plan preparation.*

30. All off-site plan and profile, street improvement plans and signing & striping plans shall show all existing improvements for a distance of at least 200-feet beyond the project limits, or at a distance sufficient to show any required design transitions.
31. A small index map shall be included on the title sheet of each set of plans, showing the overall view of the entire work area.
32. Upon completion of construction, the Developer shall furnish the City with reproducible record drawings on Mylar film of all improvement plans that were approved by the City Engineer. Each sheet shall be clearly marked "As-Built" or "As-Constructed" and shall be stamped and signed by the engineer or surveyor certifying the accuracy and completeness of the drawings. The applicant shall have all AutoCAD files submitted to the City, revised to reflect the "As-Built" conditions.

#### **Rights of Way/Street Improvements**

33. Prior to issuance of any permit(s), the applicant shall offer to dedicate to the City of Banning for public purposes the right-of-way for Wilson Street fronting as an urban major highway; Half-width right-of-way of 50-feet; Curb to centerline width of 38-feet.
34. Prior to issuance of any permit(s), the applicant shall offer to dedicate to the City of Banning for public purposes the right-of-way for Hoffer Street fronting as a local street; Half-width right-of-way of 30-feet; Curb to centerline width of 20-feet.

Exhibit B  
 Conditions of Approval  
 TTM 36710, VAR 19-3001  
 Page 9 of 16

35. Prior to issuance of any permit(s), the applicant shall offer to dedicate to the City of Banning for public purposes the right-of-way for proposed local streets (cul-de-sac); Full-width right-of-way of 60 feet; Curb to curb width of 40-feet.
36. Submit a copy of the title report, closure calculations, and any separate instruments or necessary right-of-way documents to the Engineering Division for review and approval of the City Engineer prior to all improvement plans.
37. The City and Developer are to enter into a Subdivision Agreement to guarantee the construction of the public improvements as listed in the Conditions of Approval and as shown on the approved plans. The applicant shall work with the City Attorney's Office to execute the Subdivision Agreement and pay all related legal processing fees. The applicant shall initiate the formation of a Lighting, Landscaping, and Maintenance District (LL&MD) to provide maintenance for the perimeter Right-of-Way landscaping and the water quality basins identified as Lots "A", "B", & "C" [added at the Planning Commission meeting of 5/1/19].
38. All street improvement designs shall provide pavement and lane transitions per City of Banning and Caltrans standards for transition to existing street sections. Street improvements shall include signing and striping (as approved by the Public Works Director) for a four-way stop at the intersection of Wilson and Florida [added at the Planning Commission meeting of 5/1/19].
39. Construct half-width street improvements (50-feet) fronting Wilson Street, Florida Street (30-feet) and Hoffer Street (25-feet) including street lighting, curb and gutter, drive approaches, sidewalk, parkway, asphalt concrete paving, traffic signs and striping, and any transitions. Street lights shall be installed offset of the existing street lights. Applicant's geotechnical engineer shall provide the design of the pavement section based upon the Caltrans method.
40. Construct full-width street improvements fronting all local streets (cul-de-sac) including street lighting, curb and gutter, drive approaches, sidewalk, parkway, asphalt concrete paving, traffic signs and striping, and any transitions. Applicant's geotechnical engineer shall provide the design of the pavement section based upon the Caltrans method.
41. Any public improvements damaged during the course of construction shall be replaced to the satisfaction of the City Engineer, or his/her designee.
42. The applicant shall plant and perpetually maintain trees, shrubs, and ground cover placed in the parkway, slopes adjacent to public right-of-ways constructed in connection with the project. This includes providing irrigation and the clearing of debris and weed removal.
43. All required public improvements for the project shall be completed, tested, and approved by the Engineering Division prior to issuance of any Certificate of Occupancy.



Exhibit B  
Conditions of Approval  
TTM 36710, VAR 19-3001  
Page 10 of 16

### Grading and Drainage

44. Submit a Drainage Study with hydrologic and hydraulic analysis for developed and undeveloped (existing) conditions to the Engineering Division for review and approval. The study and analysis shall be prepared by a civil engineer licensed by the State of California. Drainage design shall be in accordance with Banning Master Drainage Plan adopted by Riverside County Flood Control and Water Conservation District (RCFCD), RCFCD Hydrology Manual, and standard plans and specifications. The 10-year storm flow shall be contained within the street curbs, and the 100-year storm shall be contained within the street right-of-way; when these criteria are exceeded, additional drainage facilities shall be designed and constructed.
45. At a minimum, all development will make provisions to store runoff from rainfall events up to and including the one-hundred year, three-hour duration event. Post-development peak urban runoff discharge rates shall not exceed pre-development peak urban runoff discharge rates.
46. If the site is located in a Flood Area as identified in Flood Insurance Rate Map dated August 28, 2008 the developer is responsible for providing a certification by a registered professional engineer demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
47. The project grading shall be designed in a manner that perpetuates the existing natural drainage patterns with respect to tributary drainage areas, outlet points and outlet conditions. Otherwise, a drainage easement shall be obtained for the release of concentrated or diverted storm flows off-site. The project shall accept and convey storm flows from the adjacent property to the north, east and west.
48. The applicant shall comply with Chapter 13.24 "Storm water Management Systems" of the Banning Municipal Code (BMC) and Title 18 "Grading, Erosion and Sediment Control" of the California Building Code related to excavation and grading; and, the State Water Resources Control Board's orders, rules and regulations.
49. For construction activities including clearing, grading or excavation of land that disturbs one (1) acre or more of land, or that disturbs less than one (1) acre of land, but which is a part of a construction project that encompasses more than one (1) acre of land, the applicant shall be required to submit a Storm Water Pollution Protection Plan (SWPPP) and file a Notice of Intent (NOI) with the Regional Water Quality Control Board.
50. The applicant shall ensure that the required SWPPP is available for inspection at the project site at all times through and including acceptance of all improvements by the City.
51. The applicant's SWPPP shall include provisions for all of the following Best Management Practices ("BMPs"):
  - Temporary Soil Stabilization (erosion control).

Exhibit B  
Conditions of Approval  
TTM 36710, VAR 19-3001  
Page 11 of 16

- Temporary Sediment Control.
  - Wind Erosion Control.
  - Tracking Control.
  - Non-Storm Water Management.
  - Waste Management and Materials Pollution Control.
52. All erosion and sediment control BMPs proposed by the applicant shall be designed using the CASQA BMP handbook and approved by the City Engineer prior to any onsite or offsite grading, pursuant to this project.
  53. The approved SWPPP and BMPs shall remain in effect for the entire duration of project construction until all improvements are completed and accepted by the City and the Notice of Termination (NOT) is approved by the Water Board.
  54. Prior to issuance of any grading or building permit, a Project-Specific Water Quality Management Plan (WQMP) shall be reviewed and approved in accordance with California Regional Water Quality Control Board Colorado River Basin Region Order No. R7-2013-0011.
  55. Grading and excavations in the public right-of-way shall be supplemented with a soils and geology report prepared by a professional engineer or geologist licensed by the State of California.
  56. Prior to the issuance of any building permit(s), a precise grading plan shall be submitted to the City Engineer for review and approval. A grading permit shall be obtained prior to commencement of any grading activity.
  57. The following notation shall be placed on the grading plan: "No more than three days prior to removing trees, shrubs or tall herbaceous vegetation during the breeding season for migratory birds (February 15 to August 31) a qualified biologist shall conduct a nesting bird survey."
  58. Prior to the issuance of a building permit, the applicant shall provide a lot pad certification stamped and signed by a qualified civil engineer or land surveyor. Pad certification shall list the pad elevation as shown on the approved grading plan, the actual pad elevation and the difference between the two, if any. Such pad certification shall also list the relative compaction of the pad soil.
  59. Prior to issuance of any grading or building permit, the applicant shall install trash filters in all catch basins that will be constructed as part of the storm drain improvements for this development in accordance with California Regional Water Quality Control Board Colorado River Basin Region Order No. R7-2013-0011.

Exhibit B  
Conditions of Approval  
TTM 36710, VAR 19-3001  
Page 12 of 16

### **Traffic/Airport Safety Zone**

60. Prior to the issuance of a grading permit or building permit, the applicant shall submit and obtain approval in writing from the Fire Marshall for the plans for all public or private access drives or streets. The plans shall include plan and sectional views and indicate the grade and width of the access road measured flow-line to flow-line. When a dead-end access exceeds 150 feet or when otherwise required, a clearly marked fire apparatus access turnaround must be provided and approved by the Fire Marshall. Applicable covenant, conditions or restrictions or other approved documents shall contain provisions which prohibit obstructions such as speed bumps/humps, control gates or other modifications within said easement or access road unless prior approval of the Fire Marshall is granted.
61. Driveway grades shall not exceed eight percent (8%) unless approved by the City Engineer.
62. Access drives to the public right-of-way shall be restricted to those approved by the City Engineer as shown on the approved plans.
63. Prior to the issuance of any certificate of occupancy, all fire hydrants shall have a blue reflective pavement marker indicating the hydrant location on the street/access driveway as approved by the Fire Marshall, and must be maintained in good condition by the property owner until the street is accepted for maintenance.

### **Trash/Recycling**

64. Construction debris shall be disposed of at a certified recycling site. It is recommended that the developer contact the City's franchised solid waste hauler, Waste Management of the Inland Valley at 1-800-423-9986, for disposal of construction debris.

### **Final Map**

65. Security for the construction of public improvements in accordance with Government Code Section 66499 shall be as follows:
  - Faithful Performance Bond - 100% of estimated cost
  - Labor and Material Bond - 100% of estimated cost
  - Monumentation Bond - \$10,000.00

*Submit a copy of the title report, closure calculations, and any separate instruments or necessary easement or right-of-way documents to the Engineering Division for review and approval of the City Engineer prior to final map approval.*

66. A map of the proposed subdivision drawn at 1"=200' scale showing the outline of the streets including street names shall be submitted to the City to update the city atlas map.



Exhibit B  
Conditions of Approval  
TTM 36710, VAR 19-3001  
Page 13 of 16

67. An original Mylar of the final map (after recordation) shall be provided to the City for the record files.
68. A record of all street centerline monument ties shall be submitted to the Engineering Division upon completion of improvements or prior to release of Monumentation Bond.

#### **Fees**

69. Plan check fees for professional report review (geotechnical, drainage, etc.), and all improvement plans review, shall be paid at the time of submittal of said documents for review and approval in accordance with the fee schedule in effect at the time of submittal.
70. Public Works Inspection fees shall be paid prior to issuance of any permits in accordance with the fee schedule in effect at time of time of scheduling.
71. A plan storage fee shall be paid for any engineering plans that may be required prior to issuance of certificate of occupancy in accordance with the fee schedule in effect at the time the fee is paid.

#### **Water**

72. Design and construct an 8" D.I.P. water line on public streets and connect to the existing water system. Provide a looped system, typically achieved by having a minimum of two separate connections to existing water mains on different streets. Submit Water Improvement Plans to Public Works Department, Water Division for review and approval. If the water line is not located on a public street, an easement over the water line, minimum 15-feet in width, shall be granted to the City of Banning for maintenance purposes.
73. Prepare and submit for review a hydraulic analysis demonstrating adequate fire flow protection with the proposed water system improvements.
74. An RPP backflow device must be installed at each dedicated irrigation water connection. The backflow device must be in compliance with the State Department of Health Regulations.
75. Fire Services, other than residential fire sprinklers, will require an RPP backflow device.
76. Pay all applicable water connection and frontage fees per Chapter 13.08 "Water, Sewer and Electricity Rates" of the Banning Municipal Code prior to the issuance of a building permit.

#### **Sewer**

77. Design and construct sewer line on public streets and connect to the existing sewer system. Submit Sewer Improvement Plans to Public Works Department, Sewer Division for review and approval. If the sewer line is not located on a public street,

Exhibit B  
 Conditions of Approval  
 TTM 36710, VAR 19-3001  
 Page 14 of 16

an easement over the sewer line, minimum 20-feet in width, shall be granted to the City of Banning for maintenance purposes.

78. All sewer lines to be constructed within the public right-of-way (R/W) shall be SDR 26 PVC Pipe, minimum of eight inches (8") in diameter. All sewer laterals shall be a minimum of 4" SDR 26 PVC. Final sizes shall be approved by the City Engineer.
79. A sewer check valve shall be provided for each building with a finish pad elevation lower than the rim elevation of the immediate up-stream sewer manhole.
80. Pay all applicable sewer connection and frontage fees per Chapter 13.08 "Water, Sewer and Electricity Rates" of the Banning Municipal Code prior to the issuance of a building permit.

#### **Water and Sewer Fees**

81. Plan check fees for professional report review (hydraulic analysis, etc.), and all improvement plans review, shall be paid at the time of submittal of said documents for review and approval in accordance with the fee schedule in effect at the time of submittal.
82. Public Works Inspection fees shall be paid prior to issuance of any permits in accordance with the fee schedule in effect at time of time of scheduling.
83. Water and sewer connection fees including frontage fees and water meter installation charges shall be paid at the time of building permit issuance in accordance with the fee schedule in effect at that time.

#### **County Fire Department:**

The Fire Department requires the listed fire protection measures be provided in accordance with the City of Banning Municipal Code and/or the Riverside County Fire Department Fire Protection Standards. Final conditions will be addressed when complete buildings plans are reviewed:

84. Effective January 1<sup>st</sup>, 2011 all one/two family dwellings and townhouses will require an automatic residential fire sprinkler system designed and installed in accordance with section HCD R313.3 or NFPA 13D.
85. For residential areas, approved standard fire hydrants shall be located within 400-feet of all exterior portions of the structure. Minimum fire flow shall be 500-GPM for 30-minute duration at 20-PSI.
86. Prior to building plan approval and construction, applicant/developer shall furnish two copies of the water system fire hydrant plans to Fire Department for review and approval. Plans shall be signed by a registered civil engineer, and shall confirm hydrant type, location, spacing, and minimum fire flow. Once plans are signed and

Exhibit B  
Conditions of Approval  
TTM 36710, VAR 19-3001  
Page 15 of 16

approved by the local water authority, the originals shall be presented to the Fire Department for review and approval.

87. Prior to issuance of building permits, the water system for fire protection must be provided as approved by the Fire Department and the local water authority.
88. Blue dot retro-reflectors pavement markers on private streets, public streets and driveways to indicated location of the fire hydrant.
89. Fire Apparatus access road shall be in compliance with the Riverside County Fire Department Standards. Access lanes will not have an up, or downgrade of more than 15%. Access lanes will be designed to withstand the weight of 80,000 lbs. over 2 axles. Access will have a turning radius capable of accommodating fire apparatus. Access lane shall be constructed with a surface so as to provide all weather driving capabilities.
90. Any turn-around requires a minimum 38-foot turning radius. All structures shall be accessible from an approved roadway to within 150-feet of all portions of the exterior of the first floor.
91. The minimum dimension for access roads and gates is 20-feet clear and unobstructed width and a minimum vertical clearance of 13 feet 6 inches (13.5") in height.
92. The applicant or developer shall prepare and submit to the Fire Department for approval, a site plan designating required fire lanes with appropriate lane printing and/or signs.

**Building Department:**

93. The site shall be developed in compliance with all current model codes. All plans shall be designed in compliance with the latest editions of the California Building Codes as adopted by the City of Banning.
94. Separate submittals and permits are required for all accessory structures such as but not limited to, trash enclosures, patios, block walls and storage buildings.

**Electric Utility Department:**

95. The Banning Electric Utility ("Utility") will require adequate easements need to service the project. The easement area behind sidewalk may be needed for Wilson Street and Florida Street for vaults, conduits, street lights and pad mounted transformers.

Exhibit B  
Conditions of Approval  
TTM 36710, VAR 19-3001  
Page 16 of 16

96. Easements may also be required for Streets "A", "B", & "C" for vaults, conduits, meter pedestals, and pad mounted transformers and additional easements will be required to serve lots 7 and 39 from Street "A" and Street "B". According to the initial submittal of TTM 36710, street lights on Streets "A", "B", & "C" were to be privately owned and not maintained by the city and would have required to be metered. The resubmittal now suggests that Streets "A", "B", & "C" are public streets. Therefore, street lights on these streets will be maintained by Banning Electric Utility and shall adhere to the Utility's electric standards. This information will need to be verified by the developer prior to the issue of any permits to construct.
97. The applicant shall cause a recyclables Plot Plan to be submitted and approved by the Department of Public Works [added at the Planning Commission meeting of 5/1/19].

#### ADDITIONAL CONDITION

98. The applicant shall make every feasible effort in coordination with Southern California Edison (SCE) to shift the easement behind lots 8 – 19 to the westerly lots (8 – 13, and the water quality/detention basin located at the northeast corner of Street "A" and Wilson St.) in order to build a single wall along the property line between lots 8 – 19 [added at the Planning Commission meeting of 5/1/19].

END OF CONDITIONS

# **ATTACHMENT 5**

Project Plans



**ATTACHMENT 6**  
Public Hearing Notice



**NOTICE OF PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM TO CONSIDER THE APPROVAL OF TENTATIVE TRACT MAP (TTM) 36710 AND VARIANCE 19-3001; WHICH IS A PROPOSAL TO SUBDIVIDE FOUR LOTS TOTALING 10.6 ACRES OF VACANT LAND INTO 39 SINGLE-FAMILY RESIDENTIAL LOTS AND THREE LETTERED LOTS APN'S 534-183-014, 534-200-004, 534-200-008, AND 534-200-047**

**NOTICE IS HEREBY GIVEN** of a public hearing before the City of Banning City Council, to be held on Tuesday, June 11, 2019, at 5:00 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider proposed Tentative Tract Map 36710, to create 39 single-family residential lots and three lettered lots and Variance 19-3001 to allow for a reduced lot size and width for lot number seven (7). The subject parcels are located generally north of East Wilson Street and west of North Florida Street in the City of Banning. The review period on the proposed Mitigated Negative Declaration was August 11, 2017, through August 31, 2017.

Information regarding the Mitigated Negative Declaration, Tentative Tract Map 36710 and Variance 19-3001 can be obtained by contacting the City's Community Development Department at (951) 922-3125, or by visiting the City Hall located at 99 East Ramsey Street, Banning. You may also go to the City of Banning website at <http://www.ci.banning.ca.us/>.

All parties interested in speaking either in support of or in opposition to this item are invited to attend the hearing, or to send their written comments to the Community Development Department, City of Banning at 99 E. Ramsey Street, P.O. Box 998, Banning, California, 92220.

If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the City Council makes its recommendation on the proposal; or, you or someone else raised at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009).

BY ORDER OF THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA

Adam B. Rush, AICP  
Community Development Director

Dated: May 28, 2019  
Publish: May 31, 2019

534-183-014/200-004,008,047  
RMG RESIDENTIAL 2010  
8800 N GAINES CENTER #255  
SCOTTSDALE AZ 85258

534-172-002  
WASHINIA  
3051 E WASHINGTON BLVD  
LOS ANGELES CA 90023

534-172-003  
D HERSHEL & PATRICIA A WILSON  
149 N SAN GORGONIO AVE  
BANNING CA 92220

534-172-004  
FISERV ISS & CO  
20700 VENTURA BLVD #222  
WOODLAND HILLS CA 91364

534-172-005  
SUTTICHAJ & DIANA BENHAR  
311 E HOFFER ST  
BANNING CA 92220

534-172-007  
STEVE S & DEBRA L EIDE  
158 W ORANGE ST  
COVINA CA 91723

534-172-008  
JAN M D VIDALIN  
385 E HOFFER ST  
BANNING CA 92220

534-183-001  
USHA R SODHI  
1375. RANGETON DR  
WALNUT CA 91789

534-183-002  
JASON LEUNG  
P O BOX 389  
MONTEREY PARK CA 91754

534-183-003  
NICOLAS GURIERREZ  
3592 MARIN DR  
IRVINE CA 92606

534-183-004  
FLORENTINO C & MARIA EDITH  
RODRIGUEZ  
922 N ALESSANDRO RD  
BANNING CA 92220

534-183-005  
MARK A SALOMON  
P O BOX 3580  
MONTEBELLO CA 90640

534-183-006  
LYNN MARY & PHILIP MARION TOSCANO  
P O BOX 56  
REDLANDS CA 92373

534-183-007  
JOSEPH P TAMULONIS TRUST  
516 N 41ST ST  
BANNING CA 92220

534-183-008  
JESUS & ADRIANA RODRIGUEZ  
858 N ALESSANDRO RD  
BANNING CA 92220

534-183-009  
EDWIN C ENWEDO  
12830 BARBAZON DR  
MORENO VALLEY CA 92555

534-183-010  
DIANNE ROSE SKINNER  
9735 QUARTERLINE RD  
CHARLEVOIX MI 49720

534-183-011  
JAMES L & LINDA S BYERLY  
1091 ROCTON DR  
PASADENA CA 91107

534-183-012  
MARK A & MONICA G PORTER  
310 E HOFFER ST  
BANNING CA 92220

534-183-013  
BILLY RAY ROBERTS  
340 E HOFFER ST  
BANNING CA 92220

534-183-015  
MARILYN E DOTY  
1066 N KINGSWELL AVE  
BANNING CA 92220

534-183-016  
DAVID J SCANLAN  
182 N 1ST ST  
BANNING CA 92220

534-191-007  
MAURICIO & ROSITA ACEVEDO  
749 E WORKMAN AVE  
COVINA CA 91723

534-191-008  
THOMAS L & HILDE I WEAVER  
2381 QUINCY WAY  
PALM SPRINGS CA 92262

534-191-009/200-048/541-032-024  
JOSE G FORMENTO  
285 N WOODLAND AVE  
BANNING CA 92220

534-191-013  
PELTON W & BLANCH P TEAGUE  
1867 N DURWARD AVE  
BANNING CA 92220

534-192-006  
NASH YNDA  
1082 N DURWARD AVE  
BANNING CA 92220

534-192-007  
STATE OF MONTGOMERY MURPHY  
1060 N DURWARD AVE  
BANNING CA 92220

534-192-008/200-003  
CARLOS & AMANDA TREJO  
2435 W WESTWARD  
BANNING CA 92220

534-192-009  
I SPSSM INVESTMENTS  
4900 SANTA ANITA #2C  
EL MONTE CA 91731

534-192-010  
RUBEN CERVANTEZ  
505 E HOFFER ST  
BANNING CA 92220

534-192-011  
HORACIO BARAJAS GOMEZ  
525 E HOFFER ST  
BANNING CA 92220

534-192-012  
SAUL OWEN STECK  
543 E HOFFER ST  
BANNING CA 92220

534-192-013  
ELIAS & GUADALUPE PRECIADO  
1050 E 9TH ST  
BEAUMONT CA 92223

534-192-014  
ENTRUST ADMIN TRUS  
P O BOX 5181  
GARDEN GROVE CA 92846

534-192-016  
GARRETT CAMPBELL  
560 E KING ST  
BANNING CA 92220

534-192-017  
JUAN MANUEL RAMIREZ ARIAS  
540 E KING ST  
BANNING CA 92220

534-192-018  
JOSEPH JARA  
1251 BEAUMONT AVE  
BEAUMONT CA 92223

534-192-019  
CHARLEY E ELLISON  
500 E KING ST  
BANNING CA 92220

534-192-020  
ALVIN E WALTON  
1109 N WEAVER ST  
BANNING CA 92220

534-196-003  
ESTANISLAO L & VALENTINA I SANTANA  
1060 N FLORIDA ST  
BANNING CA 92220

534-196-004  
KEITH B COLEMAN  
639 E HOFFER ST  
BANNING CA 92220

534-200-001  
WILLIE T & LINDA JONES  
22866 MAYBROOK WAY  
MORENO VALLEY CA 92557

534-200-002  
SUSAN S MILLER  
P O BOX 269  
BANNING CA 92220

534-200-005  
HUGH & EVANGELINE JOHNSON  
550 E HOFFER ST  
BANNING CA 92220

534-200-006  
ROSARIO URREA  
556 E HOFFER ST  
BANNING CA 92220

534-200-011  
TIMMY & ELLEN MARIE MONTGOMERY  
12080 CREST RD  
POWAY CA 92064

534-200-012  
LUCY MAE & NORRIS SMITH  
680 E HOFFER ST  
BANNING CA 92220

534-200-032  
BRIAN J ROMBERG  
P O BOX 1241  
REDLANDS CA 92373

534-200-033  
PHYLLIS WARE  
P O BOX 1572  
BANNING CA 92220

534-200-034  
MARION & MARY J JOUBERT  
895 N HERMOSA PL  
BANNING CA 92220

534-200-035  
FLORENCIO VILLASENOR  
12932 10TH ST  
CHINO CA 91710

534-200-036  
RHONDA S SANCHEZ  
1401 W WILSON ST  
BANNING CA 92220

534-200-037  
NORA E BRUCE  
11435 LOMBARDY LN  
MORENO VALLEY CA 92557

534-200-038  
LOIS EVELYN & MARGIE LARUE SMITH  
661 E WILSON ST  
BANNING CA 92220

534-200-039  
MIGUEL SUAREZ  
639 E WILSON ST  
BANNING CA 92220

534-200-040  
MARGIE LARUE SMITH  
621 E WILSON ST  
BANNING CA 92220

534-200-042  
MICHAEL & MARGIE SHARPLES CAMPBELL  
12198 2ND ST  
YUCAIPA CA 92399

534-200-043  
JUAN & SABINA MEDINA  
890 N FLORIDA ST  
BANNING CA 92220

534-200-044  
STEPHEN ROMBERG  
8475 BLUFF RD  
BANNING CA 92220

534-200-045  
MICHAEL & DORIS NIKRAVESH  
12501 CHANDLER BLVD #204  
VALLEY VILLAGE CA 91607

534-200-046  
ETHEL WALKER  
944 N FLORIDA ST  
BANNING CA 92220

534-200-049  
WILL W & BETTY J HICKS  
850 N FLORIDA ST  
BANNING CA 92220

534-200-051  
HUGO ALAS  
638 E HOFFER ST  
BANNING CA 92220

534-200-052  
ERS HOMES  
638 E HOFFER ST  
BANNING CA 92220

541-020-013/031-011  
BANNING UNION HIGH SCHOOL DISTRICT  
161 W WILLIAMS ST  
BANNING CA 92220

541-032-001  
LESTER D & ESTELLE LEWIS  
642 E WILSON ST  
BANNING CA 92220

541-032-002  
ANTONIA G CONTRERAS  
P O BOX 1508  
BANNING CA 92220

541-032-003  
SCOTTIE CHAKOU YANG  
736 N FLORIDA ST  
BANNING CA 92220

541-032-004  
MICHAEL A SHIRLEY  
P O BOX 890626  
TEMECULA CA 92589

541-032-038  
EFREN S & BETTY M GARCIA  
678 E WILSON ST  
BANNING CA 92220

541-032-039  
REYES & MARIA O FUENTES  
662 E WILSON ST  
BANNING CA 92220

541-032-040  
CITY OF BANNING  
P O BOX 998  
BANNING CA 92220

United Engineering Group  
Attn: Beau Cooper  
10602 Trademark Pkwy  
Suite 509  
Rancho Cucamonga, CA 91730

**ATTACHMENT 7**  
Notice of Determination (NOD)



## Notice of Determination

## Appendix D

## To:

☐ Office of Planning and Research

U.S. Mail:

P.O. Box 3044

Sacramento, CA 95812-3044

Street Address:

1400 Tenth St., Rm 113

Sacramento, CA 95814

☒ County ClerkCounty of: RiversideAddress: 2724 Gateway DriveRiverside, CA 92507

## From:

Public Agency: City of BanningAddress: 99 East Ramsey StreetBanning, CA 92220Contact: Adam B. RushPhone: 951-922-3131

Lead Agency (if different from above):

Address: \_\_\_\_\_

Contact: \_\_\_\_\_

Phone: \_\_\_\_\_

**SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.**

State Clearinghouse Number (if submitted to State Clearinghouse): \_\_\_\_\_

Project Title: TTM 36710, Variance 19-3001 (A subdivision of 10.6 acres into 39 lots & reduce to lot width and size)Project Applicant: United Engineering GroupProject Location (include county): North of East Wilson Street and west of North Florida Street

## Project Description:

A Tentative Tract Map to subdivide 10.6-acres of land into 39 single-family residential lots in the Low-Density Residential (LDR) Zone and a Variance to allow for a reduced lot size and lot width of lot 7 as the lot is restricted in size by existing development to the east and west.

This is to advise that the City of Banning has approved the above  
(☒ Lead Agency or ☐ Responsible Agency)

described project on June 11, 2019 and has made the following determinations regarding the above  
(date)  
described project.

1. The project [☐ will ☒ will not] have a significant effect on the environment.
2. ☐ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.  
☒ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [☒ were ☐ were not] made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [☒ was ☐ was not] adopted for this project.
5. A statement of Overriding Considerations [☐ was ☒ was not] adopted for this project.
6. Findings [☒ were ☐ were not] made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval, or the negative Declaration, is available to the General Public at:

City of Banning Planning Department, 99 East Ramsey Street, Banning, CA 92220

Signature (Public Agency):

Title: Community Development DirectorDate: June 11, 2019

Date Received for filing at OPR: \_\_\_\_\_

**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**





**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**PREPARED BY:** Adam B. Rush, Community Development Director

**MEETING DATE:** June 11, 2019

**SUBJECT:** RESOLUTION NO. 2019-\_\_ AND ORDINANCE NO. 1547 AND MAKING FINDINGS PURSUANT TO CEQA. ORDINANCE NO. 1547 AMENDS CHAPTER 17.12 "COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS" AND 17.36 "SIGN REGULATIONS OF TITLE 17 "ZONING" OF THE BANNING MUNICIPAL CODE TO AUTHORIZE ELECTRONIC MESSAGE CENTERS IN THE DOWNTOWN COMMERCIAL ZONING DISTRICT, SUBJECT TO A CONDITIONAL USE PERMIT (CUP) AND DEVELOPMENT AGREEMENT AND ADOPTION OF RESOLUTION 2019-\_\_ DENYING ZONING TEXT AMENDMENT (ZTA) 19-97502, SUBJECT TO THE FINDINGS AND CONCLUSIONS INCORPORATED THEREIN. CITY OF BANNING, DOWNTOWN COMMERCIAL ZONING DISTRICT.

**RECOMMENDED ACTION:**

The Planning Commission recommends that the City Council adopt Resolution 2019 - \_\_, taking the following actions:

1. Making a determination under CEQA Guidelines Section 15270 that the California Environmental Quality Act (CEQA) does not apply to projects which a public agency rejects or disapproves.
2. Adoption of Resolution 2019 - \_\_ denying Ordinance No. 1547, for Zoning Text Amendment 19-97502, which amends Chapter 17.12 and 17.36 of the Banning Municipal Code (BMC) to authorize Electronic Message Centers in the Downtown Commercial Zoning District, subject to a Conditional Use Permit (CUP), subject to the findings and conclusions incorporated therein.

Pursuant to Section 17.116.040, of the Banning Municipal Code, the City Council may, upon receipt of the Planning Commission's recommendation for approval, approval in

modified form, or denial, the City Council may approve, approve with modifications, or disapprove the proposed amendment based upon its findings. Amendments to the Zoning Ordinance shall be adopted by ordinance.

**Optional Recommendation:**

1. Making a determination under CEQA Guidelines Section 15060(c)(3) that the Zoning Text Amendment is not subject to CEQA because the amendment is not a "project" as defined by the CEQA Guidelines Section 15378.
2. Adoption of Resolution 2019 -\_\_ approving Ordinance No. 1547, for Zoning Text Amendment 19-97502, which amends Chapter 17.12 and 17.36 of the Banning Municipal Code (BMC) to authorize Electronic Message Centers in the Downtown Commercial Zoning District, subject to a Conditional Use Permit (CUP), subject to the findings and conclusions incorporated therein.
3. Introduce, as read by title only, Ordinance No. 1547 (Attachment 4), an Ordinance of the City Council of the City of Banning, California, Approving Zoning Text Amendment 19-97502 to Amend Chapter 17.12 and 17.36 of the Banning Municipal Code (BMC) to authorize Electronic Message Centers in the Downtown Commercial Zoning District, subject to a Conditional Use Permit (CUP), subject to the findings and conclusions incorporated therein.

**APPLICANT INFORMATION:**

Applicant: City of Banning  
99 E. Ramsey Street  
Banning, CA 92220

Location: Downtown Commercial Zoning District (See Attached Map)

**BACKGROUND:**

The City of Banning Municipal Code provides for Commercial and Industrial Zoning Districts, which include a Downtown Commercial District. The Downtown Commercial Zoning District is the core retail and small business center of the community. The City's downtown is unique in that most suburban communities lack a traditional retail core, include street-facing retail stores, low profile buildings, and ample space to grow and expand. A successful downtown promotes a walkable, vibrant, and compact commercial "hub" that provides for a wide range of retail shops, stores, sundries, events, activities, dining, commonly needed services and more importantly an active and safe nightlife.

The City of Banning is currently engaged in a multi-year program to revitalize the City's downtown core traditionally bounded by 8<sup>th</sup> Street to the west and East Ramsey to the east, Hays Street to the north, and bounded to the south by the Interstate 10 freeway. On March 26<sup>th</sup>, the City Council appointed Councilmember Wallace, to join Mayor Pro-

Tem Andrade, in serving on the Downtown Ad Hoc Committee. This fills the position vacated by former Council Member Debbie Franklin in 2018.

#### **April 3, 2019 Planning Commission Public Hearing:**

The Planning Commission continued the public hearing on ZTA 19-97502 and requested staff review and provide additional analysis of potential sign locations. As such, the Community Development Department carefully reviewed both the existing and proposed City-related development standards concerning Electronic Message Centers, as well as, the applicable Caltrans regulations. Staff has determined that there is only a potential for one (1) proposed electronic message center within the Downtown Zoning District subject to the authorization of a Conditional Use Permit and either a Development Agreement or Lease Agreement. The Commission and public may find additional analysis is provided through the attached Exhibit "A".

#### **May 1, 2019 Planning Commission Public Hearing:**

The Planning Commission continued their discussion, from the continued public hearing on ZTA 19-97502, which included the acceptance of additional staff-prepared research and an oral report from the Community Development Director. In addition, the Commission invited the public additional opportunity to speak; public testimony that was incorporated into the public record, as the hearing had remained open from the April 3<sup>rd</sup> Planning Commission meeting. After a lengthy discussion and deliberation, the Planning Commission closed the public hearing and directed staff to prepare a Resolution incorporating findings and conclusions to support a denial recommendation to the City Council for the Zoning Text Amendment.

#### **PROPOSAL / ANALYSIS:**

As Zoning Code Text Amendments fall within the purview of the Planning Commission, a recommendation from the Commission is sought regarding the proposed Zoning Text Amendment. After receiving the Planning Commission's recommendation, the City Council will make a final determination on the proposed amendments to Chapter 17.12 and 17.36 of the Municipal Code, concerning Electronic Message Centers within the Downtown Commercial Zoning District.

Over three Planning Commission Meetings, (April 3<sup>rd</sup>, May 1<sup>st</sup>, and June 4<sup>th</sup>), the Planning Commission opened the public hearing, accepted oral presentations from City Staff, heard public testimony and then closed the Public Hearing at the May 1, 2019 Commission Meeting. By incorporating these past deliberations, the Planning Commission is recommending to the City Council the adoption of Resolution 2019-07 which provides the findings and conclusions to support a denial of ZTA 19-97502.

**ENVIRONMENTAL DETERMINATION:****A. California Environmental Quality Act (CEQA)**

The proposed Zoning Text Amendment is exempt from CEQA pursuant to Guidelines Section 15270; which allows for projects that are disapproved or rejected by a public agency to be considered exempt. CEQA Guidelines Section 15270 is intended to allow an initial screening of projects on the merits for quick disapprovals prior to the initiation of the CEQA process where the agency can determine that the project cannot be approved. In this case, the Planning Commission is recommending that the proposed Zoning Text Amendment cannot be approved, based upon the findings and conclusions incorporated herein and thus makes a finding pursuant to CEQA Guidelines Section 15270.

**B. Multiple Species Habitat Conservation Plan (MSHCP)**

The amendments to the Zoning Ordinance do not relate to any one physical project and are not subject to the MSHCP. Further, projects that are disapproved or rejected – by that finding are Categorically Exempt from CEQA – and are not required to find consistency with the MSHCP.

**ADDITIONAL REQUIRED FINDINGS**

The California Government Code and Section 17.116.050 (Findings) of the City of Banning Municipal Code require that zoning text amendments must meet certain findings prior to the approval by the City Council. The Planning Commission determined that the text amendment cannot meet the required findings and that the text amendment is inconsistent with the goals and policies of the City's General Plan. The Planning Commission also found that the proposed amendment creates an internal inconsistency within the BMC. As such, the following findings are provided in support of a Planning Commission recommendation to deny the ZTA 19-97502, to the City Council:

**Finding No. 1:** Proposed ZTA 19-97502 is inconsistent with the goals and policies of the General Plan.

**Findings of Fact:****Land Use Element:****Commercial Goal**

The Planning Commission finds that an Electronic Message Center is incompatible and does not promote a complementary land commercial use as compared with the existing business in combination with the anticipated development of the Downtown Commercial Zoning District.



Furthermore, the Planning Commission finds that the proposed message center will not meet the needs of the City's residents, as it does not provide the highest and best use for the Downtown Commercial Zoning District that alternative land uses would provide without the need to change either the land use or zoning classification to be accommodated.

**Finding No. 2:** Proposed ZTA 19-97502 is internally inconsistent with the Zoning Ordinance.

**Findings of Fact:** Proposed ZTA 19-97502 is internally inconsistent with the purpose and objectives of Title 17 of Banning Municipal Code (BMC). The Planning Commission finds that the project is likely to introduce a chaotic land use that will upset the orderly development of uses and lands within the Downtown Commercial Zoning District, through the proliferation of similar signage applications within the Downtown Commercial Zoning District. Furthermore, the project will damage the aesthetic value of the core downtown area; which is a task that involves substantial amounts of staff effort, time and resources to maintain and enhance. advertised.

**Finding No. 3:** The Planning Commission has independently reviewed and considered the requirements of the California Environmental Quality Act (CEQA).

**Findings of Fact:** In accordance with the requirements of the California Environmental Quality Act ("CEQA"), the Planning Commission finds and determines that this Zoning Text Amendment is exempt from CEQA pursuant to Guidelines Section 15270; which allows for projects that are disapproved or rejected by a public agency to be considered exempt. CEQA Guidelines Section 15270 is intended to allow an initial screening of projects on the merits for quick disapprovals prior to the initiation of the CEQA process where the agency can determine that the project cannot be approved. In this case, the Planning Commission is recommending that the proposed Zoning Text Amendment cannot be approved, based upon the findings and conclusions incorporated in the City Council Resolution attached herein and thus is making a finding pursuant to CEQA Guidelines Section 15270.

#### **PUBLIC COMMUNICATION:**

This hearing was advertised in the Record Gazette newspaper on May 31, 2019 and notices were mailed to all property owners within the Downtown Commercial Zoning District of the City and within a 300-foot radius of the District in compliance with the City's noticing requirements for public hearings.

No other written communication has been received as of the writing of this staff report.

**FISCAL IMPACT:**

This Zoning Text Amendment (ZTA) is a City-initiated code amendment and is paid for through the General Fund budget allocations. Approximately 20 total hours have been dedicated to the drafting, review, presentations, and coordination associated with the proposed amendment.

**OPTIONS:**

1. Concur with the Planning Commission's Recommendation of Denial
2. Approve the Zone Text Amendment (ZTA 19-97502) in accordance with the alternative resolution provided herein.

**ATTACHMENTS:**

1. Planning Commission Staff Report
2. Planning Commission Minutes (May 1, 2019)
3. City Council Resolution No. 2019-\_\_\_\_
4. Ordinance No. 1547 for ZTA 19-97502
5. Public Hearing Notice
6. Notice of Exemption (NOE)

Approved by:



Douglas Schulze  
City Manager

## **ATTACHMENT 1**

Planning Commission Staff Report





**CITY OF BANNING  
PLANNING COMMISSION  
STAFF REPORT**

**TO:** PLANNING COMMISSION

**FROM:** Adam B. Rush, Community Development Director

**PREPARED BY:** Adam B. Rush, Community Development Director

**MEETING DATE:** May 1, 2019

**SUBJECT:** Zoning Text Amendment No. 19-97502 Amending Chapter 17.12 "Commercial and Industrial Zoning Districts" and 17.36 "Sign Regulations" of Title 17 "Zoning" of the Banning Municipal Code to Authorize Digital Advertising Displays in the Downtown Commercial District, Subject to a Conditional Use Permit (CUP).

**RECOMMENDATION:**

Staff recommends that the Planning Commission adopt Resolution 2019-07:

1. Making a determination under CEQA Guidelines Section 15060(c)(3) that the Zoning Text Amendments are not subject to CEQA because the amendments are not a "project" as defined by the CEQA Guidelines Section 15378.
2. Approval of Zoning Text Amendment 19-97502 to amend Chapter 17.12 and 17.36 of the Municipal Code to authorize digital advertising displays in the downtown commercial district, subject to a conditional use permit.

**APPLICANT INFORMATION:**

Applicant: City of Banning  
99 E. Ramsey Street  
Banning, CA 92220

**BACKGROUND:**

The City of Banning Zoning Districts includes a Downtown Commercial District, which is the core retail and small business center of the community. The City's downtown is unique in that most suburban communities lack a traditional retail core. A successful downtown promotes a walkable, vibrant, and compact commercial "hub" that provides for a wide



**CITY OF BANNING  
PLANNING COMMISSION  
STAFF REPORT**

range of retail shops, stores, sundries, events, activities, dining, commonly needed services and more importantly an active and safe nightlife.

The City of Banning is currently engaged in a multi-year program to revitalize the City's downtown core traditionally bounded by 8<sup>th</sup> Street to the west and East Ramsey to the east, Hays Street to the north, and the Interstate 10 freeway completing the entire southern boundary. On March 26<sup>th</sup>, the City Council appointed Councilmember Wallace, to join Mayor Pro-Tem Andrade, in serving on the Downtown Ad Hoc Committee. This fills the position vacated by former councilmember Debbie Franklin in 2018. This Zoning Text Amendment is one aspect, of a focused strategic planning effort, to promote the City's downtown community through advertising, business attraction and retention, and ultimate community engagement within the City's unique downtown atmosphere.

**April 9, 2019 Planning Commission Public Hearing:**

The Planning Commission continued the public hearing on ZTA No. 19-97502 and requested that staff review and provide additional analysis of potential sign locations. As such, staff has carefully reviewed both the existing and proposed City-related development standards concerning Electronic Message Centers, as well as, the Caltrans regulations as applicable. Staff has determined that there is only a potential for one (1) proposed electronic message center within the Downtown Zoning District subject to the wide range of regulatory compliance necessary. Additional analysis is provided through the attached Exhibit "A".

**PROPOSAL / ANALYSIS:**

As Zoning Code Amendments fall within the purview of the Planning Commission, a recommendation from the Planning Commission is sought regarding the proposed Zoning Code Amendment. After receiving the Planning Commission's recommendation, the City Council will make a final determination on the proposed amendments to Chapter 17.12 and 17.36 of the Municipal Code.

The proposed amendment, if adopted by the City Council, will authorize electronic outdoor advertising signs, to be located within the downtown commercial district, subject to a Conditional Use Permit (CUP) and a development agreement or lease agreement, as determined by the City Council. The design standards set forth a maximum height limitation of 30-feet and a maximum "face" area of the sign at a maximum 200-square feet. The sign cannot encroach or impede on any public roadway, freeway, or other publicly owned and maintained right-of-way. Digital advertising displays shall contain automatic dimmers that maintain a maximum luminance of 7,500 units during the daylight hours, and 500 units from dusk (official sunset) to sunrise and during times of fog (One unit is equivalent to one candela per square meter). Additional development standards



**CITY OF BANNING  
PLANNING COMMISSION  
STAFF REPORT**

shall apply to ensure the sign is compatible with the surrounding environment and does not present an impact to adjacent business interests.

**ENVIRONMENTAL DETERMINATION:**

A. California Environmental Quality Act (CEQA)

City staff has determined that the proposed Zoning Text Amendment is not subject to the California Environmental Quality Act ("CEQA") pursuant to the State CEQA Guidelines Section 15060(c)(3) because it is not a project as defined by the CEQA Guidelines Section 15378. Section 15378 states that a Project is exempt if it involves an activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. The Zoning Text Amendment will authorize signs within the downtown commercial district, in which the City of Banning owns property and subsequently has the ability to utilize city-owned property for the purposes of economic development. In addition, adoption of the Zoning Text Amendment does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Further projects subject to the proposed Zoning Text Amendment will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA and the City of Banning Municipal Code.

B. Multiple Species Habitat Conservation Plan (MSHCP)

The amendments to the Zoning Ordinance do not relate to any one physical project and are not subject to the MSHCP. Further, projects that may be subject to the proposed Zoning Text Amendment will not require an individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

**ADDITIONAL REQUIRED FINDINGS**

The California Government Code and Section 17.116.050 (Findings) of the City of Banning Municipal Code require that Zoning Text Amendments meet certain findings prior to the approval by the City Council. The following findings are provided in support of the approval of the Zoning Text Amendment No. 97502.

**Finding No. 1:** Proposed Zone Text Amendment No. 97502 is consistent with the goals and policies of the General Plan.

**Findings of Fact:** Proposed Zone Text Amendment No. 97502 is consistent with the goals and policies of the General Plan.

Policy 4, Program 4.B



**CITY OF BANNING  
PLANNING COMMISSION  
STAFF REPORT**

Policy 4 requires the City to develop advertising and publicity programs for recreational programs and events to encourage participation.

Policy 6

Policy 6 states that the City shall develop and implement a community identification program, including monument signage, directional signs, etc. which provide attractive entry statements for the City, and which direct visitors to local points of interest.

**Land Use Element:**

Commercial Goal

Complementary commercial uses which meet the needs of the City's residents, increase the City's revenues, and provide a range of employment opportunities.

Industrial Goal

A balanced mix of non-polluting industrial land uses which provide local jobs for the City's residents.

Policy 4

The Zoning Ordinance shall include principles, design standards and guidelines, based on the Downtown Design Charrette, which provide for high quality, pedestrian oriented retail development in the Downtown Commercial zoning designation.

Pursuant to the City's General Plan – Land Use Element, Vision Statement, the City has identified the opportunity for development and redevelopment of the Ramsey Street corridor for mixed-use/commercial development in conjunction with programs available through the Redevelopment Agency. Commercial and industrial development will also be focused on the north side of Lincoln Street, adjacent to the Interstate 10 and railroad rights of way. The incorporation, of additional commercial messaging capabilities, will serve to enhance and prompt these two general plan goals and programs.





**CITY OF BANNING  
PLANNING COMMISSION  
STAFF REPORT**

**Economic Development Element:**

Goal

A balanced, broadly-based economy that provides a full range of economic and employment opportunities, while maintaining high standards of development and environmental protection.

Policy 2

The City shall take a proactive role in the retention of existing businesses and the recruitment of new businesses, particularly those that generate and broaden employment opportunities, increase discretionary incomes, and contribute to City General Fund revenues.

Program 2.B

The City shall aggressively pursue retail commercial developments which reduce the current retail sales leakage. The Banning Chamber of Commerce is partially responsible for implementation of this program. As such, the Chamber currently holds a 5-year license agreement with the City, to promote, market, and advertise business retention and attraction within the City. In addition, the Chamber is a not-for-profit organization and will be able to incorporate messaging opportunities within new electronic signs, which implements this General Plan Program.

**Finding No. 2:** Proposed Zone Text Amendment No. 19-97502 is internally consistent with the Zoning Ordinance.

**Findings of Fact:** Proposed Zone Text Amendment No. 19-97502 is consistent with the purpose and objective of the Zoning Ordinance to ensure orderly development of uses and lands within the City to protect the public health, safety, and welfare. Chapters 17.12 and 17.36 of the Municipal Code authorizes the City to issue conditional use permits to freeway oriented electronic signs, along with the incorporation of a City logo and also subject to a lease or development agreement, subject to City Council discretion. The proposed amendment will add signage of lesser size and intensity, within the Downtown Commercial District, in addition to the current authorization in both the commercial and industrial districts. The proposed zoning text amendment will protect the public health, safety, and welfare of the residents of the City by reasonably regulating the time, place, and manner of commercial signage and does not reasonably interfere with the subject matter being advertised.



**CITY OF BANNING  
PLANNING COMMISSION  
STAFF REPORT**

**Finding No. 3:** The Planning Commission has independently reviewed and considered the requirements of the California Environmental Quality Act.

**Findings of Fact:** In accordance with the requirements of the California Environmental Quality Act ("CEQA"), the City Council finds and determines that this Ordinance is not subject to CEQA pursuant to the State CEQA Guidelines Section 15060(c)(3), because it is not a project as defined by the CEQA Guidelines Section 15378. Adoption of this Ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Further projects subject to this Ordinance will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA.

The Planning Commission has analyzed proposed Zone Text Amendment No. 19-97502 and has determined that, pursuant to California Business and Professions Code Section 26055(h), CEQA "does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity", provided that said law, ordinance, rule, or regulations shall include any applicable environmental review pursuant to Division 13 of the Public Resources Code. Pursuant to that exemption, Chapter 17.12 and 17.36 of the Banning Municipal Code provides that applications for digital advertising displays require the approval of a conditional use permits, which are subject to any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code. Additionally, the digital advertising displays require conditional use permits, which are subject to discretionary review by both the Planning Commission and the City Council.

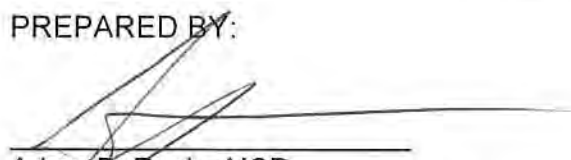
**PUBLIC COMMUNICATION:**

This hearing was advertised in the Record Gazette newspaper on March 22, 2019, and notices were mailed to all property owners within the Downtown Commercial District of the City **and** within a 300-foot radius of the Downtown Commercial District in compliance with the City's noticing requirements for public hearings.



CITY OF BANNING  
PLANNING COMMISSION  
STAFF REPORT

PREPARED BY:

  
Adam B. Rush, AICP  
Community Development Director

**PC Attachments:**

1. Site Map
2. PC Resolution No. 2019-07
3. Draft City Council Ordinance (19-97502)
4. Public Hearing Notice (PHN)



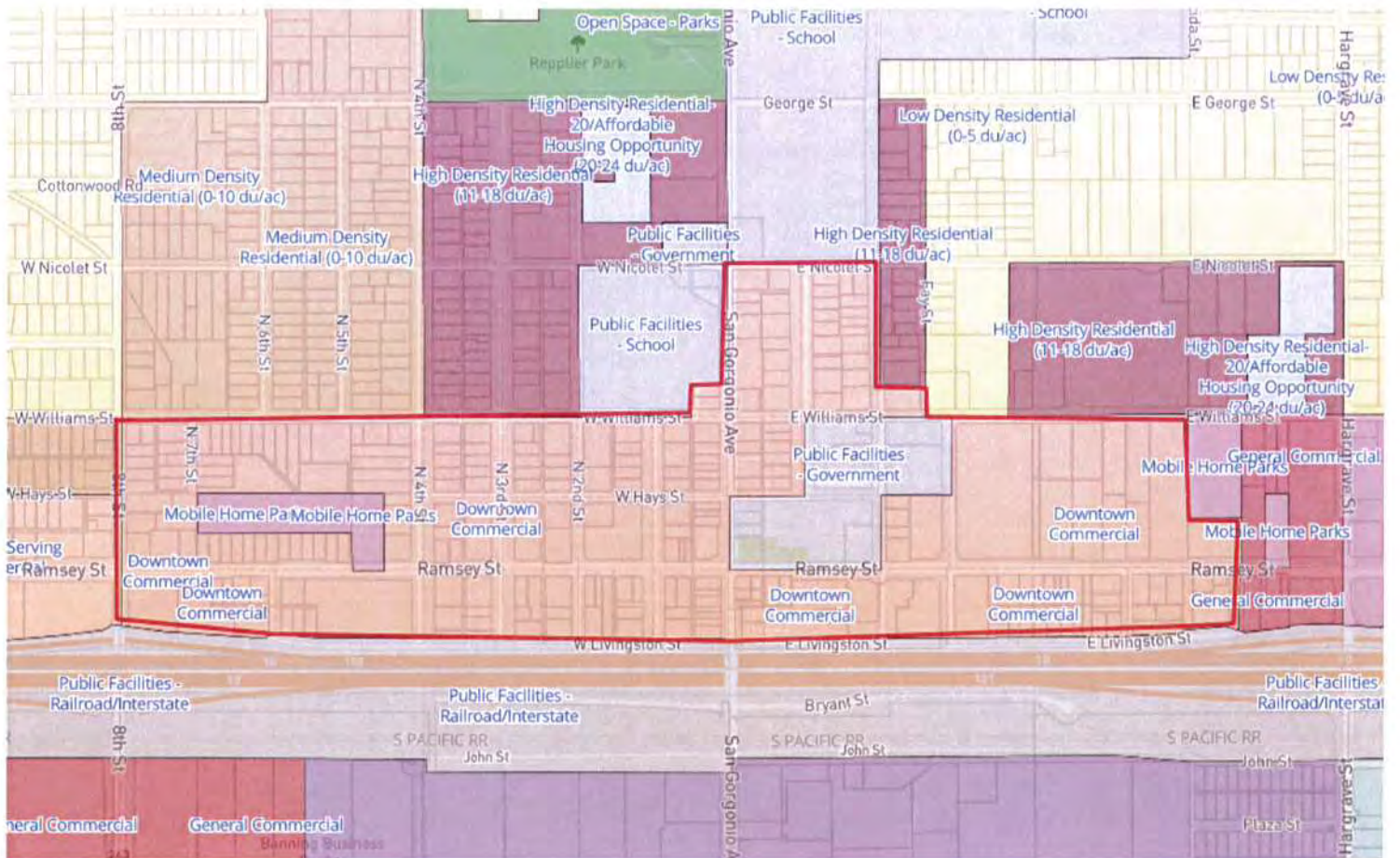
# ATTACHMENT 1

Site Map





ZTA 19-97502



1" = 689 ft

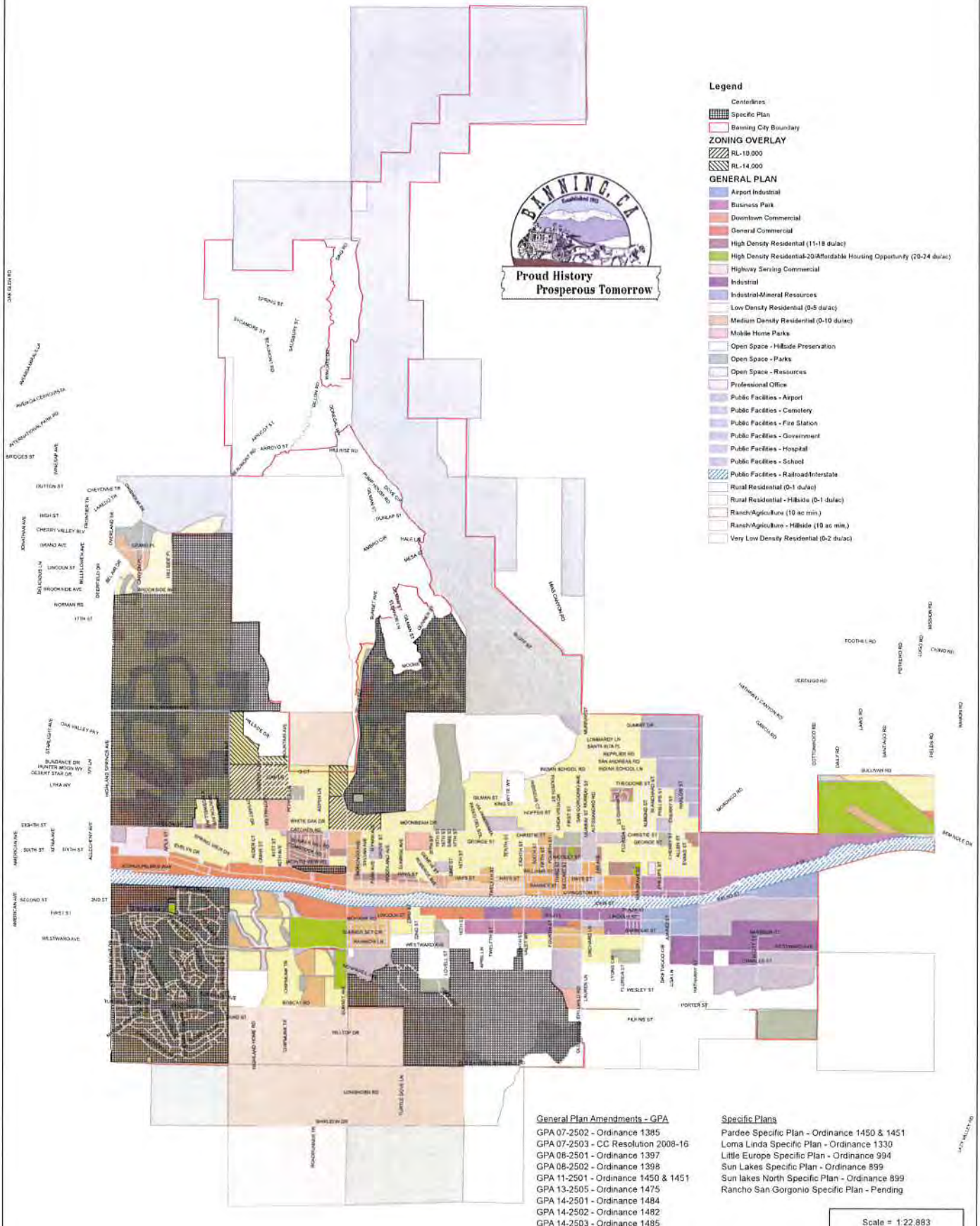
Downtown District

03/20/2019



This map may represent a visual display of related geographic information. Data provided here on is not guarantee of actual field conditions. To be sure of complete accuracy, please contact the responsible staff for most up-to-date information.

# CITY OF BANNING GENERAL PLAN WITH ZONING OVERLAY



# **ATTACHMENT 2**

PC Resolution No. 2019-07



# RESOLUTION 2019-07

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA, RECOMMENDING ADOPTION OF ZONING TEXT AMENDMENT 19-97502 AMENDING CHAPTER 17.12 "COMMERCIAL AND INDUSTRIAL DISTRICTS" AND 17.36 "SIGN REGULATIONS" OF TITLE 17 "ZONING" OF THE BANNING MUNICIPAL CODE TO AUTHORIZE DIGITAL ADVERTISING DISPLAYS IN THE DOWNTOWN COMMERCIAL DISTRICT, SUBJECT TO A CONDITIONAL USE PERMIT.**

**WHEREAS**, the City of Banning has initiated a Zoning Text Amendment in to Chapters 17.12 and 17.36, sign regulations, to authorize Digital Advertising Displays in the Downtown Commercial District, subject to a Conditional Use Permit.

**WHEREAS**, the City of Banning is located at the following address:

Project Location:	99 Ramsey Street
APN Information:	541-143-010
Project Applicant:	City of Banning 99 Ramsey Street Banning, CA, 92220
Property Owner:	City of Banning 99 Ramsey Street Banning, CA, 92220

**WHEREAS**, the Planning Commission has the authority per Chapter 17.116 of the Banning Municipal Code to take action on proposed zoning text amendment to modify Chapters 17.12 and 17.53 to authorize Digital Advertising Displays within the Downtown Commercial District (17.12.020) and establish development standards pursuant to Section 17.36.110(B)(6).

**WHEREAS**, on March 22, 2019, the City gave public notice by advertising in the Record Gazette, a newspaper of general circulation within the City of Banning, and by mailing public hearing notices to property owners within the Downtown Commercial District and also within 300-feet of the aforementioned Zoning District of the holding of a public hearing at which proposed Zoning Text Amendment No. 19-97502 would be considered;

**WHEREAS**, on April 3, 2019, the Planning Commission held a duly noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to proposed Zoning Text Amendment No. 19-97502; and

**WHEREAS**, in accordance with the requirements of the California Environmental Quality Act (CEQA), staff analyzed proposed Zoning Text Amendment No. 19-97502 and determined that pursuant to CEQA Guidelines Section 15060(c)(3), that the Zoning Text



Amendments are not subject to CEQA because the amendments are not a "project" as defined by the CEQA Guidelines Section 15378.

**NOW THEREFORE**, the Planning Commission of the City of Banning does hereby resolve, determine, find, and order as follows:

#### **SECTION 1. ENVIRONMENTAL DETERMINATION:**

##### California Environmental Quality Act (CEQA)

The Planning Division staff has determined that the project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA and the State CEQA Guidelines. The project qualifies under CEQA Guidelines Section 15060(c)(3) that the Zoning Text Amendments are not subject to CEQA because the amendments are not a "project" as defined by the CEQA Guidelines Section 15378.

##### Multiple Species Habitat Conservation Plan (MSHCP).

The Planning Commission has determined that the project is not subject to MSHCP as the amendment to the Zoning Ordinance do not relate to any one physical project and are not subject to the MSHCP. Further, projects that may be subject to the proposed Zoning Text Amendment will not require an individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

#### **SECTION 2: REQUIRED FINDINGS FOR ZONING TEXT AMENDMENT NO. 19-97502:**

Section 17.116.030 of the Banning Municipal Code provides that the Planning Commission the Planning Commission shall make a written recommendation on the proposed amendment whether to approve, approve in modified form, or disapprove based upon their findings.

Commission action recommending that the proposed Zoning Ordinance Amendment be approved, approved in modified form, or denied shall be considered by the City Council following the Planning Commission action. A copy of the Planning Commission's recommendation to approve, or approve in modified form, shall be forwarded to the City Council.

**A. Finding:     The proposed use is consistent with the General Plan;**

**Findings of Fact:** Proposed Zone Text Amendment No. 97502 is consistent with the goals and policies of the General Plan.

##### Policy 4, Program 4.B

Policy 4 requires the City to develop advertising and publicity programs for recreational programs and events to encourage participation.

Policy 6

Policy 6 states that the City shall develop and implement a community identification program, including monument signage, directional signs, etc. which provide attractive entry statements for the City, and which direct visitors to local points of interest.

**Land Use Element:**Commercial Goal

Complementary commercial uses which meet the needs of the City's residents, increase the City's revenues, and provide a range of employment opportunities.

Industrial Goal

A balanced mix of non-polluting industrial land uses which provide local jobs for the City's residents.

Policy 4

The Zoning Ordinance shall include principles, design standards and guidelines, based on the Downtown Design Charrette, which provide for high quality, pedestrian oriented retail development in the Downtown Commercial zoning designation.

Pursuant to the City's General Plan – Land Use Element, Vision Statement, the City has identified the opportunity for development and redevelopment of the Ramsey Street corridor for mixed-use/commercial development in conjunction with programs available through the Redevelopment Agency. Commercial and industrial development will also be focused on the north side of Lincoln Street, adjacent to the Interstate 10 and railroad rights of way. The incorporation, of additional commercial messaging capabilities, will serve to enhance and prompt these two general plan goals and programs.

**Economic Development Element:**Goal

A balanced, broadly-based economy that provides a full range of economic and employment opportunities, while maintaining high standards of development and environmental protection.

Policy 2

The City shall take a proactive role in the retention of existing businesses and the recruitment of new businesses, particularly those that generate and broaden employment opportunities, increase discretionary incomes, and contribute to City General Fund revenues.

Program 2.B

The City shall aggressively pursue retail commercial developments which reduce the current retail sales leakage. The Banning Chamber of Commerce is partially responsible for implementation of this program. As such, the Chamber currently holds a 5-year license agreement with the City, to promote, market, and advertise business retention and attraction within the City. In addition, the Chamber is a not-for-profit organization and will be able to incorporate messaging opportunities within new electronic signs, which implements this General Plan Program.

**B. Finding: The proposed Amendment is internally consistent with the Zoning Ordinance.**

**Findings of Fact:** Proposed Zone Text Amendment No. 19-97502 is consistent with the purpose and objective of the Zoning Ordinance to ensure orderly development of uses and lands within the City to protect the public health, safety, and welfare. Chapters 17.12 and 17.36 of the Municipal Code authorizes the City to issue conditional use permits to freeway oriented electronic signs, along with the incorporation of a City logo and also subject to a lease or development agreement, subject to City Council discretion. The proposed amendment will add signage of lesser size and intensity, within the Downtown Commercial District, in addition to the current authorization in both the commercial and industrial districts. The proposed zoning text amendment will protect the public health, safety, and welfare of the residents of the City by reasonably regulating the time, place, and manner of commercial signage and does not reasonably interfere with the subject matter being advertised.

**C. Finding: The Planning Commission has independently reviewed and considered the requirements of the California Environmental Quality Act.**

**Findings of Fact:** In accordance with the requirements of the California Environmental Quality Act ("CEQA"), the City Council finds and determines that this Ordinance is not subject to CEQA pursuant to the State CEQA Guidelines Section 15060(c)(3), because it is not a project as defined by the CEQA Guidelines Section 15378. Adoption of this Ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Further projects subject to this Ordinance will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA.

The Planning Commission has analyzed proposed Zone Text Amendment No. 97502 and has determined that, pursuant to California Business and Professions Code Section 26055(h), CEQA "does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity", provided that said law, ordinance, rule, or regulations shall include any applicable environmental review pursuant to Division 13 of the Public Resources Code. Pursuant to that exemption, Chapter 17.12 and 17.36 of the Banning Municipal Code provides that applications for digital

advertising displays require the approval of a conditional use permits, which are subject to any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code. Additionally, the electronic outdoor advertising signs require conditional use permits, which are subject to discretionary review by both the Planning Commission and the City Council.

**SECTION 3. PLANNING COMMISSION ACTION:**

Based on the findings specified above, and all other evidence in the record, the Planning Commission hereby makes a determination under CEQA Guidelines Section 15060(c)(3) that the Zoning Text Amendments are not subject to CEQA because the amendments are not a "project" as defined by the CEQA Guidelines Section 15378 and recommends that the City Council approve Zoning Text Amendment 19-97502 to amend Chapter 17.12 and 17.36 of the Municipal Code to authorize digital advertising displays in the downtown commercial district, subject to a conditional use permit.

**PASSED, APPROVED, AND ADOPTED** this 3<sup>rd</sup> day of April, 2019.

\_\_\_\_\_  
Eric Shaw, Planning Commission Chair  
City of Banning Planning Commission

APPROVED AS TO FORM  
AND LEGAL CONTENT:

\_\_\_\_\_  
Serita R. Young, Assistant City Attorney  
Richards, Watson & Gershon

ATTEST:

\_\_\_\_\_  
Sandra Calderon, Recording Secretary  
City of Banning, California

**CERTIFICATION:**

I, Sandra Calderon, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-07, was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 3<sup>rd</sup> day of April, 2019, by the following vote, to wit:

AYES: Brosious, Krick, Price, Schuler, Shaw

NOES: None

ABSENT: None

ABSTAIN: None

---

Sandra Calderon, Recording Secretary  
City of Banning, California

## **ATTACHMENT 2**

Planning Commission Minutes (May 1, 2019)



**City of Banning**  
**PLANNING COMMISSION MINUTES**

**May 1, 2019**

A regular meeting of the City of Banning Planning Commission was held on Wednesday, May 1, 2019 at 6:30 p.m., in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, CA, 92220.

**Commissioners Present:** Chairman Shaw  
 Commissioner Brosious  
 Commissioner Krick  
 Commissioner Schuler

**Commissioner Absent:** Commissioner Price

**Staff Present:** Community Development Director Adam Rush  
 Assistant City Attorney Serita R. Young  
 Contract Planner Mark de Manincor  
 Recording Secretary Sandra Calderon

**I. CALL TO ORDER:**

The meeting was called to order at 6:30 p.m. by Chairman Shaw.

**II. PUBLIC COMMENTS:**

No public comments.

**III. CONSENT CALENDAR ITEMS:**

APPROVAL OF MINUTES: Regular Planning Commission Meeting – April 3, 2019.

**ACTION: Motion/Second (KRICK/SCHULER)**  
**(Motion Carried 4-0)**  
**with Corrections**

Amended minutes will include comments regarding the evacuation plan for the project that was approved at the April 3rd Planning Commission Meeting for the construction of a 96-unit apartment complex which is located in the high fire zone. Cal Fire agreed that this development will be required to have one in place and be listed part of the conditions of approval.

#### IV. PUBLIC HEARING:

##### 1. GENERAL PLAN AMENDMENT 19-2501 INCORPORATING THE LOCAL HAZARD MITIGATION PLAN (LHMP) INTO THE CITY OF BANNING GENERAL PLAN SAFETY ELEMENT. ALL PARCELS IN THE CITY OF BANNING.

Community Development Director, Rush presented the staff report. The item is a City initiated General Plan Amendment to incorporate the local hazard mitigation plan (LHMP) into the City's Safety Element, which covers hazards, hazardous materials, faulting, flooding, emergency services, emergency operations. The Council adopted the current LHMP in 2004 and was updated since then. The plan was approved by FEMA. Assembly Bill (AB) No. 2140 requires the safety element to incorporate the LHMP in order to receive the full level of funding.

Director Rush said the current safety element of the General Plan includes the fire hazard maps and the safety zone as they were in 2006.

Commissioner Schuler said there was a freight train derailment in the City of Devore and an evacuation was done as a result. She asked if this type of hazard going to be included in the safety element.

Director Rush said the current element includes hazardous material spills. In a situation alike, the City would respond first, and then rely on County and State Officials.

Commissioner Brosious said the City should consider training all staff for emergencies so that everyone knows what role they play, or what to do.

Director Rush he will be looking into future emergency staff training.

#### **ACTION: Motion/Second (KRICK/SCHULER)**

Adopt Planning Commission Resolution 2019-11, recommending to the City Council approving General Plan Amendment to the Safety Element of the City of Banning General Plan to incorporate the 2017 Local Hazard Mitigation Plan (LHMP).

**(Motion Carried 4-0)**  
**Price Absent**

##### 2. NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING REPORT AND PROGRAM (ENVIRONMENTAL ASSESSMENT), TENTATIVE TRACT MAP (TTM) 36710 AND VARIANCE 19-3001 FOR A PROPOSAL TO SUBDIVIDE FOUR LOTS TOTALING 10.6 ACRES INTO 39 SINGLE-FAMILY RESIDENTIAL LOTS AND THREE LETTERED LOTS IN THE LOW DENSITY RESIDENTIAL ZONING DISTRICT, ASSESSOR'S PARCEL NUMBER'S 534-183-014, 534-200-004, 534-200-008 AND 534-200-047

Contract Planner Mark de Manincor presented the staff report. The item is to consider a mitigated negative declaration and mitigation monitoring program for a proposed tentative tract map to subdivide 10.6 acres into 39 single-family residential lots in the low density residential zone and a variance to allow for a reduced lot size and lot width of lot 7 as the lot is restricted in size by existing development to the east and west. The project was originally submitted in September 2015 as a Planned Unit Development (PUD) a Design Review (DR) and a Tentative Tract Map (TTM). It was approved by the Planning Commission and went City Council where it was tabled. The applicant redesigned the project and resubmitted the TTM. This new submittal is a land division and a variance only. The lots meet the Low Density Residential district standards of 7,000-foot minimum.

Suggested modifications to the Conditions of approval #6, #37, #38 and a new condition the applicant shall cause a recyclables plot plan to be submitted and approved by the Public Work's Department.

Commissioner Schuler asked if the surrounding streets have the purple pipe installed.

Director Rush said he could not see any current piping in the Nobel system under reclaimed water, but could bring that question to the City's Engineer.

Beau Cooper, Entitlement Project Manager with United Engineering Group, said the conditions of approval were reviewed and have no objections to them. He said that if there were a plan for recyclable water in this area they would agree with putting their infrastructure for future connection.

He said once a landscape maintenance district (LMD) is formed, the letter lots A, B, & C will be dedicated to the City of Banning for maintenance of those districts.

A separate meter will be issued for the landscaping district.

The easements for the electric poles will be the property owner's responsibility to maintain. In working with Edison, they agreed to a 30-foot wide easement for that power line is sufficient.

Mr. Cooper feels that the easement would work better to have the easement off set to one side only, but Edison will not condition or move that easement until grading, street plans are submitted for review.

Commissioner Krick said he sees a maintenance nightmare and asked if the maintenance of the easements could be included as part of the maintenance district.

Mr. Cooper said they would be open for that option, but landscape and lighting maintenance districts are usually preserved for public rights-of-way and City owned property.

Chairman Shaw opened public comments.

Frank Burgess, resident of Banning, recommended that he easement should be part of the landscaping program and asked for clarification regarding a retention center for this project.

Chairman Shaw said it is based on hydraulic analysis. He said projects in the City of Beaumont have underground storage underneath their landscape areas.

Commissioner Krick asked if the 30-foot easement could go to the easterly lots, allowing those lots to have 15 feet more in property to the rear of their property and taking 15-feet away from the westerly lots.

Director Rush said he would recommend that Lots 8-13 and Lots 14-19 be modified to accommodate to a maximum 30-foot easement to the easterly lots. An amendment to the final map could be done to revise tentative map before the final conditions of approval are issued before the design review comes forward.

Mr. Cooper said he would like to coordinate with Edison first and bring it back at the Design Review stage.

**ACTION: Motion/Second (KRICK/BROSIOUS)**

1. That the Planning Commission adopt Resolution 2019-08, recommending to the City Council approval of the following actions:
2. Adoption of a Mitigated Negative Declaration (MND) and Mitigation Monitoring Report and Program for the project (Environmental Assessment)
3. Approval of Tentative Tract Map 36710 for the subdivision of 10.6 acres into 39 single-family residential lots within the Low Density Residential District.
4. Approval of Variance 19-3001, subject to the findings referenced herein.

With the following amendments:

6. A six-foot tall decorative block wall shall be constructed around the perimeter of the subdivision, between houses and along all street facing side yards. View fencing, such as wrought iron, shall be constructed along detention basin areas. The applicant shall apply an anti-graffiti coating to all perimeter block walls [added at the Planning Commission meeting of 5/1/19].

37. The City and Developer are to enter into a Subdivision Agreement to guarantee the construction of the public improvements as listed in the Conditions of Approval and as shown on the approved plans. The applicant shall work with the City Attorney's Office to execute the Subdivision Agreement and pay all related legal processing fees. The applicant shall initiate the formation of a Lighting, Landscaping, and Maintenance District (LL&MD) to provide maintenance for the perimeter Right-of-Way landscaping and the water quality basins identified as Lots "A", "B", & "C" [added at the Planning Commission meeting of 5/1/19].

38. All street improvement designs shall provide pavement and lane transitions per City of Banning and Caltrans standards for transition to existing street sections. Street improvements shall include signing and striping for a four way stop at the intersection of Wilson and Florida [added at the Planning Commission meeting of 5/1/19].

97. The applicant shall cause a recyclables Plot Plan to be submitted and approved by the Department of Public Works [added at the Planning Commission meeting of 5/1/19].

(Motion Carried 4-0)  
Price Absent

**3. CONDITIONAL USE PERMIT 19-8001 TO ALLOW FOR THE OPERATION OF A RETAIL AUTO PARTS STORE LOCATED ON THE NORTHWEST CORNER OF NORTH 3<sup>RD</sup> STREET AND WEST RAMSEY STREET AT 321 WEST RAMSEY STREET IN THE DOWNTOWN COMMERCIAL (DC) ZONING DISTRICT.**

Contract Planner Mark de Manincor presented the staff report, he said the proposed project is for a Conditional Use Permit (CUP) a request to operate at 6,720 square foot retail facility to sell auto parts and related products. The proposed project is located in an existing building. A recent zoning text amendment approved by City Council Ordinance 1530 made the retail sales of auto parts a conditional permitted use within the Downtown Commercial Zoning District. Modifications to condition number 8 were presented to the Commission.

Director Rush said he spoke to the applicant agrees with the added conditions.

Tom Ogaz, General Manager for Parts Authority said the new effort to expand the existing business within the City of Banning would be an improvement and a better street image.

Commissioner Krick asked about condition number 5 that calls for a video surveillance camera system to be installed with a 90-day storage capacity. He asked if there are some existing cameras on the building.

Mr. Ogaz said the existing cameras were installed from the original owner, but will be installing their own system. They will be installed in all access points as well as sensitive areas.

Chairman Shaw opened public comments

Todd Chiriano, Owner/Real Estate Agent of American Federal Properties in Diamond Bar said he opposes the granting of the CUP and had also spoke against the Zone Text Amendment presented at the City Council meeting on September 10, 2018. He represents his client who purchased the building across the street from the proposed project. He said the owner purchased that building as an investment. City ordinance did not allow additional auto parts in the Downtown zone at that time. The City processed a Zone Text Amendment to allow for an auto parts store within the Downtown zone. The current tenant will now be moving across the street and leaving the owner in a very difficult position financially.

Frank Burgess, resident of Banning, said he supports the Auto Parts business move across the street and asked the Commission to approve the project.



David Ellis resident of Banning said the City has many vacant properties and should not prevent them from wanting to grow within the City.

Mr. Ed Omari owner of 263 W. Ramsey Street said he is amazed the current tenants are moving across the street. After checking with the City in 2017 and assured that another auto parts store would not be allowed to be established in the Downtown (DC) zone.

He said that if the zoning could be changed easily the investment to purchase the building would have not occurred.

Chairman Shaw closed public comments

**ACTION: Motion (KRICK/SCHULER)**

1. That the Planning Commission adopt Resolution 2019-09, and
2. Adopt a Notice of Exemption and finding that the project is Categorical Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) and,
3. Approval of Conditional Use Permit 19-8001 to allow the operation of an Auto Parts Store in the Downtown Commercial (DC) Zoning District.

With the following amendments:

8. The following requirements will be required at the time of plan check submittal and/or prior to building occupancy, whichever occurs first:

(a) The Site shall be developed in compliance with all current model codes. All plans shall be designed in compliance with the latest editions of the California Building Codes as adopted by the City of Banning.

(b) Commercial buildings on the site shall be accessible per California Building Code

(c) Site Facilities such as parking (open and covered), recreation facilities, and trash dumpsters, shall be accessible per California Building Code (CBC) 11A, IIB and 31B.

(d) Separate submittals and permits are required for all accessory structures such as but not limited to, trash enclosures, patios, block walls and storage buildings.

(e) Pursuant to California Business and Professions Code Section 6737, this project is required to be designed by a California licensed architect or engineer. Based on change of use and potential exiting and fire life safety improvements.

(f) The applicant shall apply an anti-graffiti coating to all perimeter block walls. [added at the Planning Commission meeting of May 1, 2019].



(g) The applicant shall cause final landscaping plans ("working drawings") that comply with the City Municipal Code relative to the City's Water Efficiency and Landscape Requirements (e.g. Article III - Landscape Design Guidelines). [added at the Planning Commission meeting of May 1, 2019]

(h) The applicant shall cause a recyclables Plot Plan to be submitted and approved by the Department of Public Works. [added at the Planning Commission meeting of May 1, 2019]

(i) Signs facing the parking area shall be placed on the exterior of the building stating, "No repairs or maintenance shall be performed in the parking area." [added at the Planning Commission meeting of May 1, 2019]

**(Motion Carried 4-0)  
Price Absent**

**4. DESIGN REVIEW 19-7001 TO ALLOW FOR THE CONSTRUCTION OF A RETAIL AUTO PARTS STORE LOCATED ON THE NORTH SIDE OF RAMSEY STREET AND EAST OF MORONGO AVENUE AT 2929 WEST RAMSEY STREET IN THE HIGHWAY SERVING COMMERCIAL (HSC) ZONING DISTRICT.**

Director Rush presented the staff report. A new facility is located within the Highway Serving Commercial (HSC) zone. A Phase One Environmental Assessment (ESA) was prepared; the property was formally agricultural property. Studies came back without any issues on that site. The architectural landscaping and design guidelines requirements were reviewed as set forth-commercial zoning district. A new condition to the Public Works Department was added and the applicant has agreed to it.

Commissioner Krick asked if there would be signage in the parking lot that prohibits mechanical work, on personal automobiles, allowed on the property.

Director Rush said he believes that is a State requirement.

Justin Petersburg, AIA, NCARB said the new condition and condition for signage regarding no work done in the parking lot is acceptable. Hopes to submit for permits within the next few weeks after approval and break ground a few months after. It will be in addition to the current store in the City of Beaumont. With the addition of this store, it will create about twelve to fifteen jobs.

Chairman Shaw opened public comments

Frank Burgess, resident of Banning, said he supports the proposed project and asked the Commissioners to approve and pass it.

Arthur Azusa, owner of 321W. Ramsey Street building said the City did well in passing the Ordinance that would allow this additional Auto Parts Store to come into Banning.

Robert Ybarra, Resident of Banning said he is in favor of the proposed project that will bring new jobs to the City. He encouraged the Commission to approve the project.

Chairman Shaw closed public comments

**ACTION: Motion (KRICK/SCHULER)**

1. That the Planning Commission adopt Resolution 2019-10, and
2. Adopt a Notice of Exemption and findings that the project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15332 (In-Fill Development Projects) and,
3. Approval of Design Review 19-7001 to allow the construction of a retail store for auto parts sales in the Highway Serving Commercial (HSC)

With the following amendments:

102. The applicant shall cause a recyclables Plot Plan to be submitted and approved by the Department of Public Works. [added at the Planning Commission meeting of May 1, 2019]

103. Signs facing the parking area shall be placed on the exterior of the building stating, "No repairs or maintenance shall be performed in the parking area." [added at the Planning Commission meeting of May 1, 2019]

**(Motion Carried 4-0)  
Price Absent**

**5. ZONING TEXT AMENDMENT 19-97502 AMENDING CHAPTER 17.12 "COMMERCIAL AND INDUSTRIAL DISTRICTS" AND 17.36 "SIGN REGULATIONS" OF TITLE 17 "ZONING" OF THE BANNING MUNICIPAL CODE TO AUTHORIZE DIGITAL ADVERTISING DISPLAYS IN THE DOWNTOWN COMMERCIAL DISTRICT, SUBJECT TO A CONDITIONAL USE PERMIT**

Director Rush presented the staff report. The Zone Text Amendment (ZTA) is to allow electronic message centers within the Downtown Commercial (DC) zone. If passed by the Planning Commission, and adopted by the City Council, subject to a Conditional Use Permit (CUP) and a Development Agreement (DA) or Lease Agreement (LA) because of City some owned property within the Downtown Commercial Zoning District. The sign limitation height is 30-feet and maximum square footage of the sign at 200-square feet. During the April 9th Planning Commission meeting, there was discussion of potential operators and locations of the proposed signed within the district. Potential electronic signs cannot be 1000 feet of another electronic sign.

There has been some talk at the staff level of potentially putting a sign on a City owned property, which is across the street from City Hall. The entire frontage of the downtown district is within the landscape area of the freeway.

Commissioner Krick asked why we need this.

Director Rush said this was on the list of projects that needed to be processed from the direction of the City Manager.

Commissioner Krick asked if a business owner in town proposed this as good idea for the City.

Director Rush said he spoke with members of the Chamber and discussion was made as a potential economic driver for the City because we have significant freeway frontage and a sense of pass through traffic going to or from the desert area.

Commissioner Krick said there are currently at least twelve signs on both of the freeway that can accommodate the needs of the businesses in town.

Chairman Shaw opened public comments

Frank Burgess said he would recommend this item be discussed with the Downtown Ad Hoc Committee and table the item.

David Ellis resident of Banning asked if anybody checked if Commissioner Kirck owns property within the Downtown zone area that is being discussed tonight. He agrees that billboards are sometimes unsightly we are in desperate need of getting businesses into town.

Director Rush said Senate Bill No. 169 was approved by the Governor on August 2013 and amended 263.3 of the Streets and Highways Code.

**ACTION: Motion (KRICK/BROSIOUS)**

Request staff to prepare a resolution making a recommendation that the City Council deny the proposed Zoning Text Amendment.

**(Motion Carried 4-0)  
Price Absent**

**PLANNING COMMISSIONER COMMENTS:**

No Comments

**VI. COMMUNITY DEVELOPMENT DIRECTOR'S COMMENTS:**

Director Rush said he would be attending the SCAG conference through the end of this week.

Some of the upcoming items will be Zoning Text Amendments regarding shipping containers. The City Manager is putting together a homeless conference. There are some interesting things other Cities are doing with shipping containers, such as temporary housing and commercial use.

Another item coming possibly in June or July is the street vendor ordinance that will go directly to City Council.

A community meeting will be held May 13th with the Sun Lakes Community to discuss the Sun Lakes Boulevard extension. An RFP for the Sun Lakes Boulevard extension realignment will go out to the environmental consultants this week.

**VII. ADJOURNMENT:**

There being no further business, the meeting adjourned at 8:51 p.m. to the next Regular Planning Commission of June 5<sup>th</sup> at 6:30 p.m. at the City of Banning Council Chambers.

Respectfully submitted,

---

Sandra Calderon  
Recording Secretary

**THE ACTION MINUTES SUMMARIZE ACTIONS TAKEN BY THE PLANNING COMMISSION. A COPY OF THE MEETING IN ITS ENTIRETY IS AVAILABLE IN DVD FORMAT AND CAN BE REQUESTED IN WRITING FROM THE CITY CLERK'S OFFICE.**

**ATTACHMENT 3**

City Council Resolution No. 2019-\_\_

## RESOLUTION 2019-\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ADOPTING FINDINGS FOR EXEMPTION FROM CEQA AND APPROVING ZONING TEXT AMENDMENT (ZTA) 19-97502 AMENDING CHAPTER 17.12 "COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS" AND 17.36 "SIGN REGULATIONS OF TITLE 17 "ZONING" OF THE BANNING MUNICIPAL CODE TO AUTHORIZE ELECTRONIC MESSAGE CENTERS IN THE DOWNTOWN COMMERCIAL ZONING DISTRICT, SUBJECT TO A CONDITIONAL USE PERMIT (CUP) AND DEVELOPMENT AGREEMENT.**

**WHEREAS**, the City of Banning has initiated a Zoning Text Amendment to Chapters 17.12 and 17.36, sign regulations, to authorize Electronic Message Centers in the Downtown Commercial Zoning District, subject to a Conditional Use Permit and Development Agreement or Lease Agreement.

**WHEREAS**, the City of Banning is located at the following address:

Project Location:	99 Ramsey Street
APN Information:	541-143-010
Project Applicant:	City of Banning 99 Ramsey Street Banning, CA, 92220
Property Owner:	City of Banning 99 Ramsey Street Banning, CA, 92220

**WHEREAS**, Chapter 17.116.040 of the Banning Municipal Code allows the City Council to take action on the proposed Zoning Text Amendment to modify Chapters 17.12 and 17.53 to authorize Electronic Message Centers within the Downtown Commercial Zoning District (17.12.020) and establish development standards pursuant to Section 17.36.110(B)(6).

**WHEREAS**, on May 31, 2019, the City gave public notice by advertising in the Record Gazette, a newspaper of general circulation within the City of Banning, and by mailing public hearing notices to property owners within the Downtown Commercial Zoning District and also within 300-feet of the aforementioned Zoning District prior to the holding of a public hearing at which proposed Zoning Text Amendment 19-97502 would be considered;



**WHEREAS**, on June 11, 2019 the City Council held a duly noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to proposed Zoning Text Amendment 19-97502; and

**WHEREAS**, in accordance with the requirements of the California Environmental Quality Act (CEQA), staff analyzed proposed Zoning Text Amendment 19-97502 and determined that pursuant to CEQA Guidelines Section 15060(c)(3) that the Zoning Text Amendments are not subject to CEQA because the amendments are not a “project” as defined by the CEQA Guidelines Section 15378.

**NOW THEREFORE**, the City Council of the City of Banning does hereby resolve, determine, find, and order as follows:

### **SECTION 1. ENVIRONMENTAL DETERMINATION:**

#### **California Environmental Quality Act (CEQA)**

The City Council, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines and Thresholds of Significance, the staff recommendation as provided in the Staff Report dated June 11, 2019, and documents incorporated therein by reference, and any other evidence [within the meaning of Public Resources Code § 21080(e) and § 21082.2] within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

#### **A. Public Record:**

The documents and other materials constituting the record of the proceedings upon which the City's decision and its findings are based is located at the City of Banning Community Development Department, Planning Division. The Notice of Exemption meets the requirements of this finding in that documents and other material constituting the record of the proceedings upon which the City's decision and findings are located at the Planning Division of the City of Banning, 99 East Ramsey Street, CA, 92220 in the custody of the Banning Community Development Department as part of the public record.

#### **B. CEQA:**

The approval of this Zoning Text Amendment 19-97502 (Exhibit A) is in compliance with requirements of the California Environmental Quality Act (“CEQA”), in that on June 11, 2019, at a duly noticed public hearing, the City Council considered the project's Notice of Exemption (Exhibit B) and finds, under CEQA Guidelines Section 15060(c)(3) and 15378, that the Zoning Text Amendments are not subject to CEQA because the amendments are not a “project” as defined by the CEQA Guidelines Section 15378.

C. Multi-Species Habitat Conservation Plan (MSHCP):

The City Council has determined that the project is not subject to MSHCP as the amendments to the Zoning Ordinance do not relate to any one physical project and are not subject to the MSHCP. Further, projects that are disapproved or rejected – by that finding are Categorically Exempt from CEQA – and are not required to find consistency with the MSHCP.

**SECTION 2: REQUIRED FINDINGS FOR ZONING TEXT AMENDMENT NO. 19-97502:**

Section 17.116.040 of the Banning Municipal Code requires that upon receipt of the Planning Commission's recommendation for approval, approval in modified form, or denial, the City Council may approve, approve with modifications, or disapprove the proposed amendment based upon its findings. Amendments to the Zoning Ordinance shall be adopted by ordinance.

The City Council hereby finds:

A. The proposed use is consistent with the General Plan;

Proposed Zone Text Amendment 19-97502 is consistent with the goals and policies of the General Plan.

The City Council finds that Policy 4, of the General Plan Land Use Element, requires the City to develop advertising and publicity programs for recreational programs and events to encourage participation the anticipated development of the Downtown Commercial Zoning District. The City has identified the opportunity for development and redevelopment of the Ramsey Street corridor for mixed-use/commercial development in conjunction with programs available through the Redevelopment Agency. Commercial and industrial development will also be focused on the north side of Lincoln Street, adjacent to the Interstate 10 and railroad rights of way. The incorporation, of additional commercial messaging capabilities, will serve to enhance and prompt these two general plan goals and programs.

The City Council finds that Policy 6, of the General Plan Land Use Element, states that the City shall develop and implement a community identification program, including monument signage, directional signs, etc. which provide attractive entry statements for the City, and which direct visitors to local points of interest.

The City Council finds that Policy 2, of the General Plan Land Use Element, requires that the City will aggressively pursue retail commercial developments which reduce the current retail sales leakage. The Banning Chamber of Commerce is partially responsible for implementation of this Policy, in concert with the City; and as such the proposed Zoning Text Amendment will provide

opportunities to fulfil this policy through advertisement of a wide range of commercial activities.

- B. Proposed Zone Text Amendment 19-97502 is internally consistent with the Zoning Ordinance.

Proposed Zone Text Amendment 19-97502 is internally consistent with the purpose and objective of the Zoning Ordinance to ensure orderly development of uses and lands within the City to protect the public health, safety, and welfare. Chapters 17.12 and 17.36 of the Municipal Code authorizes the City to issue conditional use permits to freeway oriented electronic signs, along with the incorporation of a City logo and subject to a lease or development agreement, subject to City Council discretion. The proposed amendment will add signage of lesser size and intensity, within the Downtown Commercial District, in addition to the current authorization in both the commercial and industrial districts. The proposed zoning text amendment will protect the public health, safety, and welfare of the residents of the City by reasonably regulating the time, place, and manner of commercial signage and does not reasonably interfere with the subject matter being advertised.

- C. The City Council has independently reviewed and considered the requirements of the California Environmental Quality Act.

In accordance with the requirements of the California Environmental Quality Act ("CEQA"), the City Council finds and determines that this Ordinance is not subject to CEQA pursuant to the State CEQA Guidelines Section 15060(c)(3), because it is not a project as defined by the CEQA Guidelines Section 15378. Adoption of this Ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Further projects subject to this Ordinance will require a discretionary permit and CEQA review and will be analyzed at the appropriate time in accordance with CEQA.

The City Council has analyzed proposed Zone Text Amendment 19-97502 and has determined that, pursuant to California Business and Professions Code Section 26055(h), CEQA "does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity", provided that said law, ordinance, rule, or regulations shall include any applicable environmental review pursuant to Division 13 of the Public Resources Code. Pursuant to that exemption, chapter 17.12 and 17.36 of the Banning Municipal Code provides that applications for digital advertising displays require the approval of a conditional use permits, which are subject to any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code. Additionally, the electronic outdoor advertising signs require conditional use permits, which are subject to discretionary review by both the Planning Commission and the City Council.

**SECTION 3. CITY COUNCIL ACTION:**

The City Council hereby takes the following action:

Adoption of a Notice of Exemption that the Zoning Text Amendment is exempt from CEQA pursuant to Guidelines Section 15060(c)(3); because it is not a project as defined by the CEQA Guidelines Section 15378.

Approve proposed Zoning Text Amendment 19-97502 which proposes to amend Chapter 17.12 and 17.36 of the Municipal Code to authorize Electronic Message Centers in the downtown commercial district, subject to a Conditional Use Permit.

**SECTION 4. CERTIFICATION:**

The City Clerk shall certify the adoption of this Resolution and shall cause a certified copy to be filed in the book of original resolutions.

**PASSED, APPROVED AND ADOPTED** this 11<sup>th</sup> day of June 2019.

---

Arthur L. Welch, Mayor  
City of Banning

**ATTEST:**

---

Daryl A. Betancur, Deputy City Clerk  
City of Banning

**APPROVED AS TO FORM AND LEGAL CONTENT:**

---

Kevin Ennis City Attorney  
Richards, Watson & Gershon

**CERTIFICATION:**

I, Daryl A. Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2019-\_\_\_\_ was adopted at a regular meeting of the City Council of the City of Banning held on the 11<sup>th</sup> day of June, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Daryl A. Betancur, Deputy City Clerk  
City of Banning, California

## **Exhibit A**

Zoning Text Amendment 19-97502



## **Exhibit B**

Notice of Exemption

## Notice of Exemption

## Appendix E

**To:** Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044

County Clerk

County of: Riverside

2724 Gateway Drive

Riverside, CA, 92507

**From:** (Public Agency): City of Banning

99 East Ramsey Street

Banning, CA, 92220

(Address)

Project Title: Zoning Text Amendment 19-97502, amending Sec. amending Chapters 17.12 and 17.36.

Project Applicant: City of Banning Community Development Department

Project Location - Specific:

Downtown Commercial Zoning District

Project Location - City: Banning

Project Location - County: Riverside

Description of Nature, Purpose and Beneficiaries of Project:

Zoning Text Amendment 19-97502 which amends Chapter 17.12 and 17.36 of the Banning Municipal Code (BMC) to authorize Electronic Message Centers in the Downtown Commercial Zoning District, subject to a Conditional Use Permit (CUP).

Name of Public Agency Approving Project: City of Banning

Name of Person or Agency Carrying Out Project: City of Banning

Exempt Status: **(check one):**

☒ Ministerial (Sec. 21080(b)(1); 15268);

☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));

☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));

☐ Categorical Exemption. State type and section number: \_\_\_\_\_

☐ Statutory Exemptions. State code number: \_\_\_\_\_

Reasons why project is exempt:

The project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(2); (2) In light of the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and since it can be seen with certainty there is no possibility that the activity in question may have a significant effect on the environment.

Lead Agency

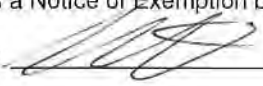
Contact Person: Adam B. Rush, AICP

Area Code/Telephone/Extension: (951) 922-3131

**If filed by applicant:**

1. Attach certified document of exemption finding.

2. Has a Notice of Exemption been filed by the public agency approving the project? ☒ Yes ☐ No

Signature:  Date: 06/11/2019 Title: Community Dev. Dir.

☒ Signed by Lead Agency ☒ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.

Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: \_\_\_\_\_

## RESOLUTION 2019-\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ADOPTING FINDINGS FOR EXEMPTION FROM CEQA AND DENYING ZONING TEXT AMENDMENT (ZTA) 19-97502 AMENDING CHAPTER 17.12 "COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS" AND 17.36 "SIGN REGULATIONS OF TITLE 17 "ZONING" OF THE BANNING MUNICIPAL CODE TO AUTHORIZE ELECTRONIC MESSAGE CENTERS IN THE DOWNTOWN COMMERCIAL ZONING DISTRICT, SUBJECT TO A CONDITIONAL USE PERMIT (CUP) AND DEVELOPMENT AGREEMENT.**

**WHEREAS**, the City of Banning has initiated a Zoning Text Amendment to Chapters 17.12 and 17.36, sign regulations, to authorize Electronic Message Centers in the Downtown Commercial Zoning District, subject to a Conditional Use Permit and Development Agreement or Lease Agreement.

**WHEREAS**, the City of Banning is located at the following address:

Project Location:	99 Ramsey Street
APN Information:	541-143-010
Project Applicant:	City of Banning 99 Ramsey Street Banning, CA, 92220
Property Owner:	City of Banning 99 Ramsey Street Banning, CA, 92220

**WHEREAS**, Chapter 17.116.040 of the Banning Municipal Code allows the City Council to take action on the proposed Zoning Text Amendment to modify Chapters 17.12 and 17.53 to authorize Electronic Message Centers within the Downtown Commercial Zoning District (17.12.020) and establish development standards pursuant to Section 17.36.110(B)(6).

**WHEREAS**, on May 31, 2019, the City gave public notice by advertising in the Record Gazette, a newspaper of general circulation within the City of Banning, and by mailing public hearing notices to property owners within the Downtown Commercial Zoning District and also within 300-feet of the aforementioned Zoning District prior to the holding of a public hearing at which proposed Zoning Text Amendment 19-97502 would be considered;

**WHEREAS**, on June 11, 2019 the City Council held a duly noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to proposed Zoning Text Amendment 19-97502; and

**WHEREAS**, in accordance with the requirements of the California Environmental Quality Act (CEQA), staff analyzed proposed Zoning Text Amendment 19-97502 and determined that pursuant to CEQA Guidelines Section 15270; which allows for projects that are disapproved or rejected by a public agency to be considered exempt.

**NOW THEREFORE**, the City Council of the City of Banning does hereby resolve, determine, find, and order as follows:

### **SECTION 1. ENVIRONMENTAL DETERMINATION:**

#### **California Environmental Quality Act (CEQA)**

The City Council, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines and Thresholds of Significance, the staff recommendation as provided in the Staff Report dated June 11, 2019, and documents incorporated therein by reference, and any other evidence [within the meaning of Public Resources Code § 21080(e) and § 21082.2] within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

#### **A. Public Record:**

The documents and other materials constituting the record of the proceedings upon which the City's decision and its findings are based is located at the City of Banning Community Development Department, Planning Division. The Notice of Exemption meets the requirements of this finding in that documents and other material constituting the record of the proceedings upon which the City's decision and findings are located at the Planning Division of the City of Banning, 99 East Ramsey Street, CA, 92220 in the custody of the Banning Community Development Department as part of the public record.

#### **B. CEQA:**

The approval of this Zoning Text Amendment 19-97502 (Exhibit A) is in compliance with requirements of the California Environmental Quality Act ("CEQA"), in that on June 11, 2019, at a duly noticed public hearing, the City Council considered the project's Notice of Exemption (Exhibit B) and finds, under CEQA Guidelines Section 15270, that the California Environmental Quality Act (CEQA) does not apply to projects which a public agency rejects or disapproves.

#### **C. Multi-Species Habitat Conservation Plan (MSHCP):**

The City Council has determined that the project is not subject to MSHCP as the amendments to the Zoning Ordinance do not relate to any one physical project

and are not subject to the MSHCP. Further, projects that are disapproved or rejected – by that finding are Categorically Exempt from CEQA – and are not required to find consistency with the MSHCP.

**SECTION 2: REQUIRED FINDINGS FOR ZONING TEXT AMENDMENT NO. 19-97502:**

Section 17.116.040 of the Banning Municipal Code requires that upon receipt of the Planning Commission's recommendation for approval, approval in modified form, or denial, the City Council may approve, approve with modifications, or disapprove the proposed amendment based upon its findings. Amendments to the Zoning Ordinance shall be adopted by ordinance.

The City Council hereby finds:

A. The proposed use is inconsistent with the General Plan;

Proposed Zone Text Amendment 19-97502 is inconsistent with the goals and policies of the General Plan.

The City Council finds that an Electronic Message Centers is incompatible and does not promote a complementary commercial land use as compared with the existing business in combination with the anticipated development of the Downtown Commercial Zoning District.

Furthermore, the City Council finds that the proposal to add Electronic Message Centers, to the Downtown Commercial Zoning District will not meet the needs of the City's residents, as it does not provide the highest and best use for the Downtown Commercial Zoning District that alternative land uses would provide without the need to change either the land use or zoning classification to be accommodated.

B. Proposed Zone Text Amendment 19-97502 is internally inconsistent with the Zoning Ordinance.

Proposed Zone Text Amendment 19-97502 is internally inconsistent with the purpose and objectives of Title 17 of Banning Municipal Code (BMC). The Planning Commission finds that the project is likely to introduce a chaotic land use that will upset the orderly development of uses and lands within the Downtown Commercial Zoning District, through the proliferation of similar signage applications within the Downtown Commercial Zoning District. Furthermore, the project will damage the aesthetic value of the downtown commercial area; which is a task that involves substantial amounts of intense staff effort, time and resources to maintain and enhance. advertised.

C. The City Council has independently reviewed and considered the requirements of the California Environmental Quality Act.

In accordance with the requirements of the California Environmental Quality Act ("CEQA"), the Planning Commission finds and determines that this Zoning Text Amendment is exempt from CEQA pursuant to Guidelines Section 15270; which allows for projects that are disapproved or rejected by a public agency to be considered exempt. CEQA Guidelines Section 15270 is intended to allow an initial screening of projects on the merits for quick disapprovals prior to the initiation of the CEQA process where the agency can determine that the project cannot be approved. In this case, the City Council finds that the proposed Zoning Text Amendment cannot be approved, based upon the findings and conclusions incorporated herein and thus is making a finding pursuant to CEQA Guidelines Section 15270.

### **SECTION 3. CITY COUNCIL ACTION:**

The City Council hereby takes the following action:

Adoption of a Notice of Exemption based upon CEQA Guidelines Section 15270 that the Zoning Text Amendment is exempt from CEQA pursuant to Guidelines Section 15270; which allows for projects that are disapproved or rejected by a public agency to be considered exempt.

Deny the proposed Zoning Text Amendment 19-97502 which proposes to amend Chapter 17.12 and 17.36 of the Municipal Code to authorize Electronic Message Centers in the downtown commercial district, subject to a Conditional Use Permit.

### **SECTION 4. CERTIFICATION:**

The City Clerk shall certify the adoption of this Resolution and shall cause a certified copy to be filed in the book of original resolutions.

**PASSED, APPROVED AND ADOPTED** this 11<sup>th</sup> day of June, 2019.

---

Arthur L. Welch, Mayor  
City of Banning

**ATTEST:**

---

Daryl A. Betancur, Deputy City Clerk  
City of Banning



**APPROVED AS TO FORM AND LEGAL CONTENT:**

\_\_\_\_\_  
Kevin Ennis City Attorney  
Richards, Watson & Gershon

**CERTIFICATION:**

I, Daryl A. Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2019-\_\_\_\_ was adopted at a regular meeting of the City Council of the City of Banning held on the 11<sup>th</sup> day of June, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Daryl A. Betancur, Deputy City Clerk  
City of Banning, California

## **Exhibit A**

Zoning Text Amendment 19-97502

(See Attachment No. 4 - Zone Text Amendment 19-97502)

**Exhibit B**  
Notice of Exemption

## Notice of Exemption

## Appendix E

To: Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044

County Clerk

County of: Riverside

2724 Gateway Driver

Riverside, CA, 92507

From: (Public Agency): City of Banning

99 East Ramsey Street

Banning, CA, 92220

(Address)

Project Title: Zoning Text Amendment 19-97502, amending Sec. amending Chapters 17.12 and 17.36.

Project Applicant: City of Banning Community Development Department

Project Location - Specific:

Downtown Commercial Zoning District

Project Location - City: Banning

Project Location - County: Riverside

Description of Nature, Purpose and Beneficiaries of Project:

Zoning Text Amendment 19-97502 which amends Chapter 17.12 and 17.36 of the Banning Municipal Code (BMC) to authorize Electronic Message Centers in the Downtown Commercial Zoning District, subject to a Conditional Use Permit (CUP).

Name of Public Agency Approving Project: City of Banning

Name of Person or Agency Carrying Out Project: City of Banning

Exempt Status: **(check one):**

☐ Ministerial (Sec. 21080(b)(1); 15268);

☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));

☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));

☒ Categorical Exemption. State type and section number: 15270

☐ Statutory Exemptions. State code number: \_\_\_\_\_

Reasons why project is exempt:

Section 15270; which allows for projects that are disapproved or rejected by a public agency to be considered exempt. The Planning Commission is recommending that the proposed Zoning Text Amendment cannot be approved, based upon the findings and conclusions incorporated in the City Council Resolution attached herein and thus is making a finding pursuant to CEQA Guidelines Section 15270.

Lead Agency

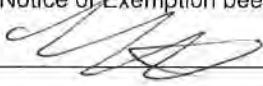
Contact Person: Adam B. Rush, AICP

Area Code/Telephone/Extension: (951) 922-3131

If filed by applicant:

1. Attach certified document of exemption finding.

2. Has a Notice of Exemption been filed by the public agency approving the project? ☒ Yes ☐ No

Signature:  Date: 06/11/2019 Title: Community Dev. Dir.

☒ Signed by Lead Agency ☒ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.

Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: \_\_\_\_\_

**ATTACHMENT 4**

Zone Text Amendment 19-97502

## ORDINANCE NO. 1547

AN ORDINANCE NO. 1547 AND MAKING FINDINGS PURSUANT TO CEQA. ORDINANCE NO. 1547 AMENDS CHAPTER 17.12 "COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS" AND 17.36 "SIGN REGULATIONS OF TITLE 17 "ZONING" OF THE BANNING MUNICIPAL CODE TO AUTHORIZE ELECTRONIC MESSAGE CENTERS IN THE DOWNTOWN COMMERCIAL ZONING DISTRICT, SUBJECT TO A CONDITIONAL USE PERMIT (CUP) AND DEVELOPMENT AGREEMENT SUBJECT TO THE FINDINGS AND CONCLUSIONS INCORPORATED THEREIN. CITY OF BANNING, DOWNTOWN COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS PURSUANT TO CEQA

**WHEREAS**, the City of Banning has initiated a Zoning Text Amendment to Chapters 17.12 and 17.36, sign regulations, to authorize Electronic Message Centers in the Downtown Commercial Zoning District, subject to a Conditional Use Permit and Development Agreement or Lease Agreement.

**WHEREAS**, the City of Banning is located at the following address:

Project Location:	99 Ramsey Street
APN Information:	541-143-010
Project Applicant:	City of Banning 99 Ramsey Street Banning, CA, 92220
Property Owner:	City of Banning 99 Ramsey Street Banning, CA, 92220

**WHEREAS**, Chapter 17.116.040 of the Banning Municipal Code allows the City Council to take action on the proposed Zoning Text Amendment to modify Chapters 17.12 and 17.53 to authorize Electronic Message Centers within the Downtown Commercial Zoning District (17.12.020) and establish development standards pursuant to Section 17.36.110(B)(6).

**WHEREAS**, on May 31, 2019, the City gave public notice by advertising in the Record Gazette, a newspaper of general circulation within the City of Banning, and by mailing public hearing notices to property owners within the Downtown Commercial Zoning District and also within 300-feet of the aforementioned Zoning District prior to the holding of a public hearing at which proposed Zoning Text Amendment 19-97502 would be considered;



**WHEREAS**, on June 11, 2019 the City Council held a duly noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to proposed Zoning Text Amendment 19-97502; and

**WHEREAS**, in accordance with the requirements of the California Environmental Quality Act (CEQA), staff analyzed proposed Zoning Text Amendment 19-97502 and determined that pursuant to CEQA Guidelines Section 15060(c)(3) that the Zoning Text Amendments are not subject to CEQA because the amendments are not a "project" as defined by the CEQA Guidelines Section 15378.

**NOW THEREFORE**, the City Council of the City of Banning does hereby resolve, determine, find, and order as follows:

### **SECTION 1. ENVIRONMENTAL DETERMINATION:**

#### **California Environmental Quality Act (CEQA)**

The City Council, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines and Thresholds of Significance, the staff recommendation as provided in the Staff Report dated June 11, 2019, and documents incorporated therein by reference, and any other evidence [within the meaning of Public Resources Code § 21080(e) and § 21082.2] within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

#### **A. Public Record:**

The documents and other materials constituting the record of the proceedings upon which the City's decision and its findings are based is located at the City of Banning Community Development Department, Planning Division. The Notice of Exemption meets the requirements of this finding in that documents and other material constituting the record of the proceedings upon which the City's decision and findings are located at the Planning Division of the City of Banning, 99 East Ramsey Street, CA, 92220 in the custody of the Banning Community Development Department as part of the public record.

#### **B. CEQA:**

The approval of this Zoning Text Amendment 19-97502 (Exhibit A) is in compliance with requirements of the California Environmental Quality Act ("CEQA"), in that on June 11, 2019, at a duly noticed public hearing, the City Council considered the project's Notice of Exemption (Exhibit B) and finds, under CEQA Guidelines Section 15060(c)(3) and 15378, that the Zoning Text Amendments are not subject to CEQA because the amendments are not a "project" as defined by the CEQA Guidelines Section 15378.

C. Multi-Species Habitat Conservation Plan (MSHCP):

The City Council has determined that the project is not subject to MSHCP as the amendments to the Zoning Ordinance do not relate to any one physical project and are not subject to the MSHCP. Further, projects that are disapproved or rejected – by that finding are Categorical Exempt from CEQA – and are not required to find consistency with the MSHCP.

**SECTION 2: REQUIRED FINDINGS FOR ZONING TEXT AMENDMENT NO. 19-97502:**

Section 17.116.040 of the Banning Municipal Code requires that upon receipt of the Planning Commission's recommendation for approval, approval in modified form, or denial, the City Council may approve, approve with modifications, or disapprove the proposed amendment based upon its findings. Amendments to the Zoning Ordinance shall be adopted by ordinance.

The City Council hereby finds:

A. The proposed use is consistent with the General Plan;

Proposed Zone Text Amendment 19-97502 is consistent with the goals and policies of the General Plan.

The City Council finds that Policy 4, of the General Plan Land Use Element, requires the City to develop advertising and publicity programs for recreational programs and events to encourage participation the anticipated development of the Downtown Commercial Zoning District. The City has identified the opportunity for development and redevelopment of the Ramsey Street corridor for mixed-use/commercial development in conjunction with programs available through the Redevelopment Agency. Commercial and industrial development will also be focused on the north side of Lincoln Street, adjacent to the Interstate 10 and railroad rights of way. The incorporation, of additional commercial messaging capabilities, will serve to enhance and prompt these two general plan goals and programs.

The City Council finds that Policy 6, of the General Plan Land Use Element, states that the City shall develop and implement a community identification program, including monument signage, directional signs, etc. which provide attractive entry statements for the City, and which direct visitors to local points of interest.

The City Council finds that Policy 2, of the General Plan Land Use Element, requires that the City will aggressively pursue retail commercial developments which reduce the current retail sales leakage. The Banning Chamber of Commerce is partially responsible for implementation of this Policy, in concert with the City; and as such the proposed Zoning Text Amendment will provide

opportunities to fulfil this policy through advertisement of a wide range of commercial activities.

- B. Proposed Zone Text Amendment 19-97502 is internally consistent with the Zoning Ordinance.

Proposed Zone Text Amendment 19-97502 is internally consistent with the purpose and objective of the Zoning Ordinance to ensure orderly development of uses and lands within the City to protect the public health, safety, and welfare. Chapters 17.12 and 17.36 of the Municipal Code authorizes the City to issue conditional use permits to freeway oriented electronic signs, along with the incorporation of a City logo and subject to a lease or development agreement, subject to City Council discretion. The proposed amendment will add signage of lesser size and intensity, within the Downtown Commercial District, in addition to the current authorization in both the commercial and industrial districts. The proposed zoning text amendment will protect the public health, safety, and welfare of the residents of the City by reasonably regulating the time, place, and manner of commercial signage and does not reasonably interfere with the subject matter being advertised.

- C. The City Council has independently reviewed and considered the requirements of the California Environmental Quality Act.

In accordance with the requirements of the California Environmental Quality Act ("CEQA"), the City Council finds and determines that this Ordinance is not subject to CEQA pursuant to the State CEQA Guidelines Section 15060(c)(3), because it is not a project as defined by the CEQA Guidelines Section 15378. Adoption of this Ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Further projects subject to this Ordinance will require a discretionary permit and CEQA review and will be analyzed at the appropriate time in accordance with CEQA.

The City Council has analyzed proposed Zone Text Amendment 19-97502 and has determined that, pursuant to California Business and Professions Code Section 26055(h), CEQA "does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity", provided that said law, ordinance, rule, or regulations shall include any applicable environmental review pursuant to Division 13 of the Public Resources Code. Pursuant to that exemption, chapter 17.12 and 17.36 of the Banning Municipal Code provides that applications for digital advertising displays require the approval of a conditional use permits, which are subject to any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code. Additionally, the electronic outdoor advertising signs require conditional use permits, which are subject to discretionary review by both the Planning Commission and the City Council.

**SECTION 3. CITY COUNCIL ACTION:**

The City Council hereby takes the following action:

Adoption of a Notice of Exemption that the Zoning Text Amendment is exempt from CEQA pursuant to Guidelines Section 15060(c)(3); because it is not a project as defined by the CEQA Guidelines Section 15378.

Approve proposed Zoning Text Amendment 19-97502 which proposes to amend Chapter 17.12 and 17.36 of the Municipal Code to authorize Electronic Message Centers in the downtown commercial district, subject to a Conditional Use Permit.

**SECTION 4. CERTIFICATION:**

The City Clerk shall certify the adoption of this Ordinance No. 1547 and shall cause a certified copy to be filed in the book of original Ordinances.

**PASSED, APPROVED AND ADOPTED** this 11<sup>th</sup> day of June 2019.

---

Arthur L. Welch, Mayor  
City of Banning

**ATTEST:**

---

Daryl A. Betancur, Deputy City Clerk  
City of Banning

**APPROVED AS TO FORM AND LEGAL CONTENT:**

---

Kevin Ennis City Attorney  
Richards, Watson & Gershon

**CERTIFICATION:**

I, Daryl A. Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1547 was adopted at a regular meeting of the City Council of the City of Banning held on the 11<sup>th</sup> day of June, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Daryl A. Betancur, Deputy City Clerk  
City of Banning, California

## **Exhibit A**

Zoning Text Amendment 19-97502



**ZONING TEXT AMENDMENT 19-97502 AMENDING CHAPTER 17.12 “COMMERCIAL AND INDUSTRIAL DISTRICTS” AND 17.36 “SIGN REGULATIONS” OF TITLE 17 “ZONING” OF THE BANNING MUNICIPAL CODE TO AUTHORIZE DIGITAL ADVERTISING DISPLAYS IN THE DOWNTOWN COMMERCIAL DISTRICT, SUBJECT TO A CONDITIONAL USE PERMIT.**

Chapter 17.12.020 – Permitted, Conditional, and Prohibited Commercial and Industrial Uses

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
Retail Uses								
Commercial and non-commercial electronic messaging	C	C	C				C	

Chapter 17.36 - SIGN REGULATIONS

17.36.010 - Purpose.

The purpose of this chapter is to establish sign regulations that are intended to:

- A. Limit and control the location, size, type and number of signs allowed in the City of Banning.
- B. To provide for a more orderly display of advertising devices, while implementing community design standards with respect to character, quality of materials, color, illumination and maintenance, which are consistent with the City's General Plan.
- C. To bring these advertising devices into harmony with the buildings, with the neighborhood, with the natural environment, and with other signs in the area.
- D. To preserve and improve the appearance of the City as a place in which to live and work, and as an attraction to nonresidents who come to visit or trade.
- E. To encourage sound signage practices as an aid to business and for the information of the public, while preventing excessive and confusing sign displays.
- F. To reduce hazards to motorists, bicyclists and pedestrians.
- G. And to promote the public health, safety, viewsheds, aesthetic values, and general welfare of the community by regulating and controlling all matters relating to signs.

(Zoning Ord. dated 1/31/06, § 9109.01.)

17.36.020 - Applicability.

- A. This chapter shall apply to all signage proposed within the community. No signs shall be erected or maintained in any land use district established by this Zoning

Ordinance, except those signs specifically enumerated in this chapter. The number and area of signs as outlined in this chapter are intended to be maximum standards.

- B, In addition to the standards set forth herein, consideration shall be given to a sign's relationship to the need that it serves, and the overall appearance of the subject property as well as the surrounding community. Compatible design, simplicity, and sign effectiveness are to be used in establishing guidelines for sign approval.

(Zoning Ord. dated 1/31/06, § 9109.02.)

#### 17.36.030 - Definitions.

**Abandoned Sign.** Any display remaining in place or not maintained for a period of one hundred twenty days or more which no longer advertises or identifies an on-going business, product, or service available on the business premises where the display is located.

**Address Sign.** The numeric reference of a structure or use to a street, included as part of a wall or monument sign.

**A-Frame Sign.** A free standing sign usually hinged at the top, or attached in a similar manner, and widening at the bottom to form a shape similar to the letter "A". Such signs are usually designed to be auxiliary portable commercial signage; hence they are not considered permanent signs.

**Anchor Tenant.** A shopping center key tenant, usually the largest or one of the largest tenants located within the shopping center, which serves to attract customers to the center through its size, product line, name, and reputation.

**Animated Sign.** A sign with action or motion, flashing or color changes, requiring electrical energy, electronic or manufactured sources of supply, but not including wind actuated elements such as flags or banners. Said definition shall not include displays such as time and temperature, revolving, changeable copy or public information centers.

**Announcement or Bulletin Board Signs.** Signs permanent in character designed to accept changeable copy, handbills, posters and matters of a similar nature.

**Area of Sign.** The area of a sign shall be the entire area including any type of perimeter or border which may enclose the outer limits of any writing, representation, emblem, figure or character excluding architectural features or design. The area of the sign having no such perimeter or border shall be computed by enclosing the entire area within parallelograms, triangles or circles of the smallest size sufficient to cover the entire area of the sign and computing the area of these parallelograms, triangles or circles. The area computed shall be the maximum portion or portions which may be viewed from any one direction.

**Awning, Canopy, or Marquee Sign.** A nonelectric sign that is printed on, painted on, or attached to an awning, canopy, or marquee and is only permitted on the vertical surface or flap.

**Banner.** A temporary display such as used to announce open houses, grand openings or special announcements. Often made of cloth, bunting, plastic, paper, or similar material.

**Bench Sign.** Copy painted on any portion of a bus stop or other bench.

**Billboard.** See outdoor advertising sign [structure].

**Building Face and/or Frontage.** The length of the single front building elevation in which the primary entrance to the business is located. If more than one business is located in a single



building, then such length shall be limited to that portion which is occupied by each individual business.

**Canopy Sign.** Shall mean a sign attached to either the underside of the canopy, or marquee, or directly to the canopy itself.

**Changeable Copy Sign.** A sign designed to allow the changing of copy through manual, mechanical, or electrical means.

**City Identification Sign.** A freeway-oriented pylon sign that prominently displays the name of the City of Banning and that may also include within the pylon sign a billboard, outdoor advertising structure, or an electronic message center.

**Civic Event Sign.** A temporary sign, other than a commercial sign, posted to advertise a civic event sponsored by a public agency, school, church, civic-fraternal organization, or similar noncommercial organization.

**Commercial Seasonal Sign.** An "open" or "closed" window sign, posted on a seasonal basis.

**Contractor's Sign/Construction Sign.** A temporary sign erected on the parcel on which construction is taking place, limited to the duration of the construction, indicating the names of the architects, engineers, landscape architects, contractors, or similar artisans, and the owner, financial supporters, sponsors, and similar individuals or firms having a major role or interest with respect to the structure or project.

**Digital Advertising Displays.** See **Electronic Message Center [structure]**.

**Directional Sign.** Signs limited to on-premises directional messages, principally for pedestrian or vehicular traffic, such as "one way", "entrance", or "exit".

**Directory Sign.** A sign for listing the tenants or occupants and their suite numbers of a building or center.

**Double-faced Sign.** A single structure designed with the intent of providing copy on both sides.

**Eaveline.** The bottom of the roof eave or parapet.

**Election Sign.** A temporary sign related to or directly associated with a national, state, county or local election or referendum.

**Electronic Message Center.** A sign having the capability of presenting variable advertising message displays by projecting an electronically controlled light pattern against a contrasting background, and which can be programmed to change such message display periodically. An electronic message center is neither an animated sign nor a simulated motion sign.

**Flags and pennants.** Shall mean devices generally made of flexible materials, usually cloth, paper or plastic, and displayed on strings. They may or may not contain copy. This definition shall not include the flag of the United States or of any state.

**Flags of the State and Nation.** A flag of the United States or the State of California.

**Flashing Sign.** A sign that contains an intermittent or sequential flashing light source.

**Freestanding Sign.** A sign which is supported by one or more uprights, braces, poles, or other similar structural components that is not attached to a building or buildings. Flagpoles are not included in this definition.

**Freeway.** A highway in respect to which the owners of abutting land have no right or easement of access or in respect to which such owners have only limited or restricted right or easement of

access, and which is declared to be such in compliance with the Streets and Highways Code of the State of California.

**Future Tenant Identification Sign.** A temporary sign which identifies a future use of a site or building.

**Grand Opening.** A promotional activity not exceeding thirty calendar days used by newly established businesses, within two months after occupancy, to inform the public of their location and service available to the community. Grand Opening does not mean an annual or occasional promotion of retail sales or activity by a business.

**Ground Sign.** A display attached to the ground, within an architecturally planned wall or structure, and not over eight feet in height.

**Height of Sign.** The greatest vertical distance measured from the existing grade at the mid-point of the sign support(s) that intersect the ground to the highest element of the sign.

**Holiday Decoration Sign.** Temporary signs, in the nature of decorations, clearly incidental to and customarily associated with holidays.

**Identification Sign.** A sign attached to the building and displaying only the name, type of business, and/or logo in combination, identifying a particular business establishment.

**Illegal Sign.** Any of the following: A sign erected without first complying with all ordinances and regulations in effect at the time of its construction and erection or use; a sign that was legally erected, but whose use has ceased, or the structure upon which the display is placed has been abandoned by its owner, not maintained, or not used to identify or advertise an ongoing business for a period of not less than one hundred twenty days; a sign that was legally erected which later became nonconforming as a result of the adoption of an ordinance, the amortization period for the display provided by the ordinance rendering the display nonconforming has expired, and conformance has not been accomplished; a sign which is a danger to the public or is unsafe; a sign which is a traffic hazard not created by relocation of streets or highways or by acts of the City or County. Abandoned signs and prohibited signs are also illegal.

**Illuminated Sign.** A sign with an artificial light source, either internal or external, for the purpose of lighting the sign.

**Institutional Sign.** A sign identifying the premises of a church, school, hospital rest home, or similar institutional facility.

**Kiosk.** An off-premises sign of no more than four square feet in size, used for directing people to the sales office or models of a residential subdivision project.

**Logo.** An established identifying symbol or mark associated with a business or business entity.

**Lot or Street frontage.** The linear front footage of a parcel of property abutting a dedicated public street.

**Logo Sign.** An established trademark or symbol identifying the use of a building.

**Monument Sign.** An independent structure supported from grade to the bottom of the sign with the appearance of having a solid base.

**Murals.** Painted wall signs which have a majority of the sign area comprised of noncommercial content, which generally have artistic, historic or cultural themes, and which are designed and painted (or supervised) by an artist who possesses demonstrated knowledge and expertise in the design, materials, and execution of murals or other art. Commercial content of murals shall be subject to all applicable sign limitations of the underlying zone district.



**Non-Commercial Sign.** A sign which does not promote, identify or sell a business or product.

**Nonconforming Sign.** A legally established sign which fails to conform to the regulations of this chapter. Otherwise conforming signs whose height exceeds the provisions of this chapter only because a special topographical circumstance results in a material impairment of the visibility of the display or the owner's ability to adequately and effectively continue to communicate with the public through the use of the display if the sign were limited to the height allowed in this chapter shall not be considered nonconforming.

**Occupancy Frontage.** Each individual tenant space within a building or group of buildings which faces upon a dedicated street or public parking area between such space and street.

**Off-Site Sign.** Any sign which advertises or informs in any manner businesses, services, goods, persons, or events at some location other than that upon which the sign is located. Off-premises sign, billboard, and outdoor advertising structure are equivalent terms.

**Open House Sign.** A temporary on-site sign posted to indicate a salesperson is available to represent the property subject to sale, lease, or rent.

**Outdoor Advertising Structure (Billboard).** Any sign with a commercial message, other than a directional sign, which directs attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than upon the premises where the sign is located, or to which it is affixed. Commercial copy on any outdoor advertising sign may be replaced with noncommercial copy. Outdoor advertising structures/billboards shall not include subdivision or tract signs (see section 17.36.080), signage affiliated with solar powered electric vehicle charging stations, or sign installed pursuant to a city sign program.

**Painted Sign.** Signs painted on the exterior surface of a building or structure; however, if such signs have raised borders, letters, characters, decorations or lighting appliances, they shall be considered wall signs.

**Parcel or lot of real property.** A parcel or lot of real property under separate ownership from any other parcel or lot and having street or highway frontage.

**Political Sign.** A sign other than an election sign directly associated with an ideological, political or similar noncommercial message on a sign.

**Portable Sign.** A sign that is not permanently attached to the ground or a building.

**Projecting Sign.** Any sign which is suspended from or supported by a building or wall, and which projects eighteen inches or more outward therefrom.

**Promotional Sign.** A sign erected on a temporary basis to promote the sale of new products, new management, new hours of operation, a new service, or to promote a special sale.

**Public Information Center.** Any display which is characterized by changeable copy, letters or symbols.

**Pylon Sign.** A freestanding sign that is permanently supported by one or more uprights, braces, or poles, or other similar structural components that are architecturally compatible with the main structure of the site.

**Real Estate Sign.** An on-site sign pertaining to the sale or lease of the premises.

**Relocated Billboard.** An existing billboard that is located in the City that is relocated through a City Council approved relocation agreement, including the replacement of a static billboard face with an electronic message center. The relocated billboard is not considered a new outdoor advertising sign.

**Revolving Sign.** Any sign that revolves, either by wind actuation or by electrical means.

**Roof Sign.** A sign erected, constructed, or placed upon or over a roof of a building, including a mansard roof and which is wholly or partly supported by such buildings.

**Shopping Center.** A group of four or more businesses which function as an integral unit on a single parcel or group of parcels and utilize common off-street parking and access and is identified as a shopping center.

**Sign.** Any structure, housing, device, figure, statuary, painting, display, message placard, or other contrivance, or any part thereof, which is designed, constructed, created, engineered, intended, or used to advertise, or to provide data or information in the nature of advertising, for any of the following purpose: to designate, identify, or indicate the name of the business of the owner or occupant of the premises upon which the advertising display is located; or, to advertise the business conducted, services available or rendered, or the goods produced, sold, or available for sale, upon the property where the advertising display is erected. This definition shall include all parts, portions, units and materials composing same, together with illumination, frame, background, structure, support and anchorage therefor.

**Sign Area.** The entire face of a sign, including the surface and any framing, projections, or molding, but not including the support structure. Individual channel-type letters mounted on a building shall be measured by the area enclosed by four straight lines outlining each word or grouping of words.

**Sign Program.** A coordinated program of one or more signs for an individual building or building complexes with multiple tenants.

**Temporary Sign.** A sign intended to be displayed for a limited period of time.

**Time and Temperature Sign.** A sign giving the time and or temperature.

**Trademark.** A word or name which, with a distinctive type or letter style, is associated with a business or business entity in the conduct of business.

**Tract Development Sign.** A sign indicating the location of a housing tract.

**Tract Directional Sign.** An off-premises sign indicating direction to a tract development.

**Vehicle Sign.** A sign which is attached to or painted on a vehicle which is parked on or adjacent to any property, the principal purpose of which is to attract attention to a product sold or an activity or business located on such property.

**Wall Sign.** A sign painted on or fastened to a wall and which does not project more than twelve inches from the building or structure.

**Window Sign.** Any sign that is applied or attached to a window or located in such a manner that it can be seen from the exterior of the structure, on a permanent or temporary basis.

(Zoning Ord. dated 1/31/06, § 9109.03; Ord. No. 1382, § 3 (part).)

(Ord. No. 1424, § 3.1, 7-13-10; Ord. No. 1493, § 3(2), 4-12-16; Ord. No. 1530, §§ 4H, 4I, 9-25-18)

17.36.040 - Sign permit required.

A. General.



1. No sign, or temporary sign, unless exempted by this chapter, shall be constructed, displayed or altered without a sign permit or sign program approved by the city. The community development department shall review all signs unless otherwise stated.
  2. Sign permits shall be reviewed and either approved or denied by the director within thirty days of submittal of a complete application. The determination of a complete application shall be in conformance with the California Permit Streamlining Act.
  3. Digital Billboards (Electronic Message Center) shall be subject to a Conditional Use Permit (CUP) pursuant to chapter 17.52. The community development department shall review all signs unless otherwise stated.
  4. Determination on sign permit applications are to be guided by the standards and criteria set forth in this article. An application will be approved whenever the proposed sign conforms to all design, size, height and other standards for signs subject to a permit requirement, as such requirements are set forth in this chapter.
  5. The director's determination shall be provided in writing, and shall include an explanation of the reasons for approval or denial. Appeal of the director's decision shall be in conformance with chapter 17.68, hearings and appeals.
- B. Sign Program. A permit for a sign program shall be required for all new commercial, office, and industrial centers consisting of three or more tenant spaces. The program shall be filed with the project application to construct the center, and shall be processed concurrently with the project application. The purpose of the program shall be to integrate signs with building and landscaping design to form a unified architectural statement. This may be achieved by:
1. The use of the same background color, and allowing signs to be of up to three different colors per multi-tenant center.
  2. The use of the same type of cabinet supports, or method of mounting for signs, and the same type of construction material for components, such as sign copy, cabinets, returns, and supports.
  3. The use of the same form of illumination of the signs, with internally lit signs generally being preferred by the city due to the lack of overspill from such lighting.
  4. Uniform sign placement specifications, letter height, and logo height for both anchor tenants and minor tenants.
  5. Logos may be permitted and are not subject to the color restrictions specified in the program. However, no logo should exceed twenty-five percent of the allowable sign area.

(Zoning Ord. dated 1/31/06, § 9109.04.)

#### 17.36.050 - Exempt signs.

The following signs shall be exempt from the provisions of this chapter:

- A. Window signs not exceeding two square foot [feet] and limited to business identification, hours of operation, address, and/or emergency information. (Neon signs of any size require a permit, if allowed.)
- B. Signs within a structure and not visible from the outside.

- C. Memorial signs and plaques installed by a civic organization recognized by the council, when cut in masonry or bronze tablets.
- D. Official and legal notices issued by a court or governmental agency.
- E. Official flags of the United States, the State of California, County of Riverside, or the City of Banning.
- F. Identification signs on construction sites. Such signs shall be limited to one directory or pictorial display sign identifying all contractors and other parties (including lender, realtor, subcontractors, etc.). Each sign shall not exceed twenty square feet in area and six feet in height. Each sign shall be removed prior to issuance of a certificate of occupancy.
- G. Election Signs. Election signs must comply with the following requirements:
  - 1. Election signs shall be limited in size to the maximum allowed in the zones where located. Any freeway oriented freestanding sign shall be required to secure all applicable permits and comply with these sign regulations including section 17.36.110.
  - 2. No election signs shall be permitted on public property or in the public right-of-way.
  - 3. There are no pre-election restrictions limiting when elections signs may be erected, but the owner of the sign must remove the sign within seven days after the applicable election has ended.
  - 4. For all election signs, the campaign shall be deemed the owner of the sign unless it can establish that it is not the owner of the sign. In the event the campaign establishes it is not the owner of the sign, the owner of the property on which the sign is placed, shall be deemed the owner of the sign.
  - 5. In the event that any such sign violates the provisions of this chapter, or if it is not removed within the period provided hereunder, it shall be subject to abatement pursuant to the procedures prescribed in section 17.36.090.
  - 6. Except as provided in this subsection, no permit shall be required for election signs.
- H. Real estate signs for residential sales shall be one sign not exceeding four square feet in area and five feet in height, provided it is unlit and is removed within seven days after the close of escrow or the rental or lease has been accomplished. Open house signs, for the purpose of selling a single house or condominium and not exceeding four square feet in area and five feet in height, are permitted for directing prospective buyers to property offered for sale.
- I. Real estate signs for the initial sale, rental, or lease of commercial and industrial premises: One sign not to exceed twenty square feet in area to advertise the sale, lease, or rent of the premises. No such sign shall exceed eight feet in overall height and shall be removed upon sale, lease or rental of the premises or twelve months, whichever comes first. Thereafter, one sign per premise not to exceed twelve square feet in size and five feet in height is permitted for the sale, lease or rent of the premise.
- J. Future tenant identification signs: One wall or freestanding sign may be placed on vacant or developing property to advertise the future use of an approved project on the property and where information may be obtained. Such sign shall be limited to one sign, a maximum of twenty square feet in area and eight feet in overall height. Any

such signs shall be single faced and shall be removed prior to the granting of occupancy permit by the city.

- K. Incidental signs for automobile repair stores, gasoline service stations, automobile dealers with service repairs, motels and hotels, showing notices of services provided or required by law, trade affiliations, credit cards accepted, and the like, attached to the structure or building; provided that all of the following conditions exist:
  - 1. The signs number no more than three.
  - 2. No such sign projects beyond any property line.
  - 3. No such sign shall exceed an area per face of three square feet.
  - 4. Signs may be double-faced.
- L. Copy applied to fuel pumps or dispensers such as fuel identification, station logo, and other signs required by law.
- M. Agricultural signs, either wall or freestanding types, non-illuminated, and not exceeding four square feet for lots two acres or less and ten square feet for lots greater than two acres, identifying only the agricultural products grown on the premises. The number of such signs shall be one per street frontage or a maximum of two, with wall signs to be located below the roofline and freestanding signs to be no higher than six feet.
- N. Sign programs which have been approved prior to the adoption of this zoning ordinance.
- O. Municipal and traffic control signs: Directional signs to aid vehicle or pedestrian traffic provided that such signs are located on-site, have a maximum area which does not exceed three square feet, have a maximum overall height of four feet above grade, and are mounted on a monument or decorative pole. Such signs may be located in a required setback provided that a minimum distance of five feet from any property line is maintained. Directional signs to the railway, the airport or the highway are among the types of signs which fall in this category.
- P. Temporary window signs may be permitted on the inside of windows facing out which do not cover more than twenty-five percent of the individual window surface for a period not to exceed thirty days use during any sixty-day period. Temporary painted signs may be on the outside of the window.
- Q. Historic site and historic landmark, and neighborhood signs, when designed in conformance with standards of the California Historic Commission or a similar entity.
- R. Professionally made restroom, telephone and walkway signs of under one square foot.
- S. Emblems or signs of a political, civic, philanthropic, educational or religious organizations, if those signs are on the premises occupied by such organizations, and do not exceed twenty-four square feet in area, or number more than one emblem or sign in total.
- T. Political Signs. Political signs must comply with the following requirements:
  - 1. Political signs shall be limited in size to the maximum allowed in the zones where located. Any freeway oriented freestanding sign shall be required to secure all applicable permits and comply with these sign regulations including section 17.36.110.
  - 2. No political signs shall be permitted on public property or in the public right-of-way.



3. In the event that any such sign violates the provisions of this chapter, it shall be subject to abatement pursuant to the procedures prescribed in section 17.36.090.
4. Except as provided in this subsection, no permit shall be required for political signs.

(Zoning Ord. dated 1/31/06, § 9109.05.)

(Ord. No. 1424, § 3.2, 3.3, 7-13-10; Ord. No. 1487 § 3.2, 4-18-15)

#### 17.36.060 - Prohibited signs.

The following signs are inconsistent with the sign standards set forth in this chapter, and are therefore prohibited:

- A. Abandoned signs.
- B. Animated, moving, flashing, blinking, reflecting, revolving, or any other similar sign, except electronic message boards.
- C. All banners, flags, and pennants in the downtown commercial zoning district and located within fifty feet of a residential property.
- D. Billboards or outdoor advertising structures. However, notwithstanding any other provision of this chapter, and consistent with the California Business and Professions Code Outdoor Advertising Act provisions, relocated billboards or outdoor advertising structures, including electronic message centers, may be considered and constructed as part of a relocation agreement entered into between the city and a billboard and/or property owner, and **Electronic Outdoor Advertising Signs, including city identification signs, or a combination of commercial messaging and city identification signs,** may be considered and constructed as part of a lease agreement, development agreement, or other agreement between the city, a sign, and property owner and subject to the requirements of **section 17.36.110(B)(9) and chapter 17.52** of the Banning Municipal Code. Such agreements may be approved by resolution of the City Council upon terms that are agreeable to the City, pursuant to administrative guidelines, as adopted by the City Council resolution. The execution of a relocation, lease agreement, development agreement, or other agreement shall not operate to change the status of any billboard as a nonconforming use for the purpose of this code.
- E. Electronic Outdoor Advertising Signs, approved pursuant to section 17.36.060(D) and subject to a Conditional Use Permit only within the downtown commercial land use district.
- F. Changeable copy signs and electronic message boards, except as allowed by a Conditional Use Permit for movie theaters, arenas, stadiums, or auto malls in the commercial land use districts.
- G. Reserved.
- H. Off-site signs, except as permitted elsewhere in this ordinance.
- I. Permanent sale signs.
- J. Portable signs or A-frame signs, except in the downtown commercial zone and shall not pose a hazard to pedestrians; and shall be stable under all-weather conditions or shall be removed.

- K. Roof signs.
- L. Signs on public property or the public rights-of-way, except for traffic regulation and signs permitted by a governmental agency.
- M. Signs painted on fences or roofs.
- N. Balloons and other inflated devices or signs designed to attract attention, except with temporary use permit.
- O. Signs that are affixed to vehicles, excluding permanent signs on commercial vehicles which are driven on a daily or weekly basis.
- P. Signs which simulate in color or design a traffic sign or signal, or which make use of words, symbols or characters in such a manner to interfere with, mislead, or confuse pedestrian or vehicular traffic.
- Q. Signs which singly or in combination with other signs block more than five percent of the view from any window or door of any structure or dwelling used primarily as a residence.
- R. Signs which singly or in combination with other signs, for any portion of the day, block natural sunlight from falling upon any window or door of any structure or dwelling used primarily as a residence.
- S. Signs which singly or in combination with other signs block more than 33% for solid lettering (or up to fifty percent if perforated vinyl window signs) of the view from any window or door of any structure used or occupied by people for more than an hour of a typical day, in all zoning districts of the City.

(Zoning Ord. dated 1/31/06, § 9109.06; Ord. No. 1377, § 1.)

(Ord. No. 1424, § 3.4, 7-13-10; Ord. No. 1447, § 3, 2-14-12; Ord. No. 1487, § 3.2, 4-28-15; Ord. No. 1493, § 3(2), 4-12-16; Ord. No. 1530, § 4J, 9-25-18)

#### 17.36.070 - Temporary signs.

Special event signs and civic event signs may be approved by the director for a limited period of time as a means of publicizing special events such as grand openings, carnivals, parades, charitable events and holiday sales. Such special event signs shall be limited to the following provisions:

- A. No special event sign shall be erected without a temporary use permit.
- B. Special event signs shall be limited to ninety days per event from the date of erection or date of permit, whichever occurs first.
- C. Special event signs shall not include promotional sales signs, and they must be taken down within a week after the conclusion of the special event.
- D. Special event signs may include balloons, inflated devices, search lights, beacons, pennants, and streamers.
- E. Such temporary signs may not be granted to the same business or location more than twice during any one year.

(Zoning Ord. dated 1/31/06, § 9109.07; Ord. No. 1448, § 9, 5-8-12)

17.36.080 - Off-site residential subdivision directional signs.

The following shall regulate and establish a standardized program of off-site residential subdivision directional kiosk signs for the city. For the purposes of this subsection, a residential subdivision is defined as a housing project within a recorded tract where five or more structures or dwelling units are concurrently undergoing construction.

- A. No kiosk sign structure shall be located less than three hundred feet from an existing or previously approved kiosk site, except in the case of signs on different corners of an intersection.
- B. The placement of each kiosk sign structure shall be reviewed and approved by the director.
- C. All kiosk signs shall be placed on private property with written consent of the property owner.
- D. A kiosk sign location plan shall be prepared, showing the site of each kiosk directional sign, and shall be approved by the director prior to the issuance of a sign permit.
- E. There shall be no additions, tag signs, streamers, devices, display boards, or appurtenances, added to the kiosk signs as originally approved, no other non-permitted directional signs, such as posters or trailer signs, may be used.
- F. All non-conforming subdivision kiosk directional signs associated with the subdivision in question must be removed prior to the placement of directional kiosk sign(s).
- G. Kiosk signs, or attached project directional signage, shall be removed when the subdivision is sold out. The applicant (or his/her legal successors) will be responsible for removal of panels and structures no longer needed.

(Zoning Ord. dated 1/31/06, § 9109.08.)

(Ord. No. 1424, § 3.5, 7-13-10)

17.36.090 - Abatement of abandoned or illegal temporary signs.

- A. Every temporary sign not owned by the property owner of the property on which it is erected shall be marked to indicate on the sign the identity of the sign owner, provided that for any commercial sign where not otherwise indicated it shall be presumed that the business being advertised is the owner.
- B. Any abandoned or illegal temporary sign is hereby declared to be a danger to the health, safety, and welfare of the citizens of Banning. Any sign which is (i) in deteriorating condition and not maintained in the condition in which it was originally installed, (ii) violates conditions of the sign permit, or (iii) is partially or wholly obscured by the growth of dry vegetation or weeds or by the presence of debris or litter also presents a danger to the health, safety, and welfare of the Banning community. Such signs may be abated as provided in this chapter.
- C. Any such signs as set forth above are hereby deemed to be a public nuisance. Any such sign, including any and all structural supports, shall be removed by the property owner within ten days after notice from the director, which notice shall provide an opportunity to be heard before the director on the abandonment and nuisance decision and an appeal may be taken pursuant to chapter 17.68. Any sign not removed within ten days after such notice, may be abated by the director if no appeal has been taken from the director's decision, or, if the appeal has been denied or modified. If after a reasonable effort to determine the owner of the sign, the owner cannot be found, then the city may summarily remove the sign and the same



shall be stored for a period of thirty days, during which time they may be recovered by the owner.

- D. Costs of an abatement conducted pursuant to this chapter shall be assessed against the owner of the sign, and to the extent permissible under law, against the owner of the property, using the procedures established in the Banning Municipal Code.

(Zoning Ord. dated 1/31/06, § 9109.09.)

(Ord. No. 1424, § 3.6, 7-13-10)

#### 17.36.100 - Sign construction and maintenance.

- A. Every sign, and all parts, portions, and materials shall be manufactured, assembled, and erected in compliance with all applicable state, federal, and city regulations, ~~including, but not limited to and the Uniform Building Code, the California Businesses and Professions Code, and applicable codes, regulations, and ordinances.~~
- B. Every sign, including those specifically exempt from this Zoning Ordinance, in respect to permits and permit fees, and all parts, portions, and materials shall be maintained and kept in good repair. The display surface of all signs shall be kept clean, neatly painted, and free from rust and corrosion. Any cracked, broken surfaces, malfunctioning lights, missing sign copy or other unmaintained or damaged portion of a sign shall be repaired or replaced within thirty calendar days following notification by the city. Noncompliance with such a request shall constitute a nuisance and ~~may result in a city code enforcement action and~~ penalties may be assessed in accordance with the provisions of these zoning ordinances.

(Zoning Ord. dated 1/31/06, § 9109.10.)

#### 17.36.110 - Sign regulations.

Signs permitted in each of the city's land use districts are identified below. In addition to the following regulations, all signs must be in compliance with all other provisions of this chapter pertaining to signs.

Signs may have commercial or non-commercial messages. A non-commercial message may be substituted for the copy of any commercial sign allowed by this chapter.

##### A. Signs in Residential Zones.

1. Up to one flagpole, displaying the flag of the US or the State of California, up to thirty-five feet in height, unless a permit is obtained from the city to have a flagpole in a private park or public park for up to sixty-five feet in height.
2. For single family homes, the following are allowed:
  - a. Up to one sign not to exceed one square foot in area, identifying the address;
  - b. Up to one unlit sign not to exceed four square feet in area, pertaining to the rental, sale or lease of the property on which the sign is located. Such signs must be temporary, and may contain no flashing, blinking or reflective objects.
3. For apartment complexes and multifamily developments, the following are allowed:
  - a. Sign(s) containing the name and/or address of the development, providing that the combined area of such signs is not exceeded as established below:

- i. Up to one wall sign
  - ii. Up to one freestanding sign per street frontage (which shall be in a landscaped area at least fifteen feet from the curb face, and not closer than five feet to the property line. Freestanding signs shall have a maximum height of eight feet inclusive of supporting structures.
  - iii. The maximum combined area of the signs set forth above shall not exceed 20 square feet, for complexes with one hundred twenty-five feet of frontage or less, and shall not exceed thirty square feet for complexes with over one hundred twenty-five square feet of frontage.
- 4. For properties in the residential zones where farming takes place, lots may have one sign per street frontage (up to a maximum of two signs) advertising only the agricultural products grown on the premises. These signs may not be illuminated, and may be either free standing or wall signs. For lots of two acres or less, each sign may be a maximum of four square feet. For lots over two acres, each sign may be a maximum of ten square feet.
- 5. No neon signs are permitted in residential areas.
- B. Signs in Commercial and Industrial Zones.
  - 1. No sign attached to a structure shall be placed above the roof line.
  - 2. Wall signs. Each business in downtown commercial zoning district shall be permitted wall signs per occupancy footage. The area devoted to such signs shall not exceed one square foot of sign area per one foot of building frontage, and shall not exceed fifty square feet of sign area. An introductory sign of a maximum of five square feet shall be allowed for twenty-five percent of the sign fee to encourage business in the downtown commercial zoning district. Each business in all other commercial and industrial zoning districts shall be permitted wall signs per the area of the wall (length times height of the wall). The area devoted to such signs shall not exceed twenty percent of the wall area. The sign area maximum for wall signs shall not apply to a freeway-oriented wall sign proposed to be located and designed in such a manner as to be viewed primarily in a direct line of sight from a main traveled roadway of a freeway or a freeway on-ramp/off-ramp and advertising onsite retail or service-oriented businesses. Freeway-oriented wall signs shall be subject to all requirements of section 17.36.110(B)(6), including requiring the approval of a conditional use permit.
  - 3. Monument signs. Each parcel or property shall be permitted one monument sign subject to all of the following conditions being met:
    - a. One square foot of sign area for one foot of building frontage is permitted. Such sign shall not exceed fifty square feet.
    - b. The buildings must be set back at least twenty-five feet from the property line.
    - c. The monument sign shall be located in a landscaped planter area not less than fifty square feet, with one dimension being at least four feet.
    - d. The monument sign may be no more than eight feet high.
    - e. Shopping centers may have one monument sign not to exceed one square foot of display face per one foot of building frontage, not to exceed one hundred square feet, for center identification. Said sign may include reader panels, and or a bulletin or a changeable copy pane.



4. Painted signs. Each business shall be permitted painted signs subject to the following conditions:
  - a. Said signs shall be in combination with or in lieu of wall signs.
  - b. The area of said painted sign shall be deducted from the total allowable wall sign.
5. Accessory signs. Signs denoting credit cards, hours of operation, etc., shall be allowed but shall not exceed three square feet in total area.
6. Freeway-oriented freestanding sign. Freeway-oriented freestanding signs, ~~including~~ shall be allowed subject to the following requirements:
  - a. Said sign shall be located and designed in such a manner as to be viewed primarily in a direct line of sight from a main traveled roadway of a freeway or a freeway on-ramp/off-ramp. The phrase "viewed primarily in direct line of sight from" shall mean that the message may be seen with reasonable clarity for a greater distance by a person traveling on the main traveled roadway of a freeway or on-ramp/off-ramp than by a person traveling on the street adjacent to the sign.
  - b. Said signs shall be limited to on-site retail or services businesses. Shopping centers may have one freeway-oriented sign and shall include city identification or city logo as approved by planning commission. Said city identification or logo shall be excluded from the display face area calculation. When the display area of the sign is used for commercial speech, the copy must qualify as onsite to the business or shopping center.
  - c. Said sign shall not block another freeway-oriented freestanding sign or ~~electronic message center~~. The applicant shall be responsible for providing the planning commission with a ~~line-of-sight analysis prepared by a Registered Civil Engineer or Architect evidence~~ to assure satisfactory compliance with this requirement, ~~as determined by the Community Development Director~~.
  - d. Said sign shall be located in a planter area not less than fifty square feet with one dimension being at least six feet, unless from the evidence presented to the planning commission it can be determined that the area is not visible from public street or right-of-way, or the absence of the planter shall not be detrimental to the appearance of the area.
  - e. Said sign shall not exceed an overall height of ~~thirty (30')~~ fifty-five feet.
  - f. Said sign shall not exceed ~~two-hundred (200')~~ one-hundred-seventy-five square feet per display face, ~~not include the City required identified or logo as referenced by this ordinance~~.
  - g. Said sign shall require approval of a conditional use permit pursuant to ~~section—Chapter 17.52 and a Development Agreement (DA), pursuant to Chapter 17.60 of this ordinance~~. In addition to satisfying requirements set forth above in this section 17.36.110(B)(6) of the Banning Municipal Code, the following findings must be made prior to approval of a conditional use permit pursuant for a freeway-oriented freestanding sign, without consideration of message content of the proposed signs:

- i. The elevation of the freeway in relation to the elevation of the abutting properties justifies the height requested, and is the minimum necessary.
  - ii. The number and spacing of freeway signs will not cause unnecessary confusion, clutter or other unsightliness in the general location.
  - iii. The use identified, as well as its type, size and intensity, justifies the size, design and location of the sign requested.
  - iv. The needs of the traveling public for identification and directional information justifies the sign requested.
- 7. One flag pole, displaying one or more flags of the state and nation, not to exceed thirty-five feet in height.
- 8. Any existing freestanding sign shall be considered legal and conforming, but shall not be altered or replaced except by approval of a conditional use permit.
- 9. City identification sign. City identification signs shall be allowed subject to approval by City Council resolution and the following requirements:
  - a. City identification signs shall not be permitted south of Interstate 10 from Sunset to Hargrave.
  - b. The City shall have the right to place public service announcements and emergency service announcements on any such electronic messaging center so long as they are not excessive or burdensome. The limits on public service announcements will be stipulated in a City Council agreement.
  - c. ~~Non-Profit and Not-for-Profit Organizations that operate within the City, shall have the right to place public service announcements and emergency service announcements on any such electronic message center so long as they are not excessive or burdensome. The Community Development Director shall review requests made pursuant to this section to determine that the announcement constitutes a non-commercial electronic message and is consistent with the Banning Municipal Code.~~
  - de. The use of onsite electric generators to power digital billboards for normal operations shall be prohibited.
  - ed. The sign face for any City identification sign shall not overhang onto Interstate 10 or any other state highway.
  - fe. Signs shall be shielded to prevent light or glare intrusion onto adjoining properties that are located within five hundred (500) feet.
  - gf. Message changes on any electronic message center shall be limited to one message every six (6) seconds, or that allowed by the California Department of Transportation, whichever is greater.
  - hg. No electronic message center shall simulate motion or exhibit any images or series of images that could be considered "animated" in any way, including but not limited to sequential still images that update faster than once every six (6) seconds. No electronic message center shall contain any flashing, sparkling, intermittent or moving lights. There shall be no flashing or scrolling messages. Changes in color or light intensity on a still image or message at a rate faster than once every six (6) seconds are also not permitted.



- ih. Electronic message centers shall contain automatic dimmers that maintain a maximum luminance of 7,500 nits during the daylight hours, and 500 nits from dusk (official sunset) to sunrise and during times of fog (One nit is equivalent to one candela per square meter). Each electronic message center shall be equipped with a mechanism to monitor brightness.
- ji. Reserved.
- kl. City identification signs shall not be illuminated between the hours of 11:00 p.m. to 5:00 a.m. when located within five hundred (500) feet of an existing residential property, or residentially zoned property.
- lm. The following advertising shall not be permitted: adult entertainment, mud wrestling, alcohol (except beer and wine), tobacco products of any type, or other content that could be reasonably considered sexually explicit or pornographic by community standards. Objectionable advertising shall be set forth in the City Council agreement.
- nn. City identification signs shall require permit approval through the Building and Safety Division, CalTrans, the Riverside County Airport Land Use Commission if located within a compatibility zone, and any other responsible agency.
- oo. City identification signs shall include architectural enhancements that add aesthetic appeal.
- pp. City identification signs shall not exceed 55 feet in height.
- qq. City identification signs shall not exceed a face area of 14 by 48 feet, inclusive of City identification.
- rr. City identification signs and all parts, portions, and materials shall be manufactured, assembled, and erected in compliance with all applicable State, Federal, and City regulations and the Uniform Building Code (BMC Section 17.36.100(A)).
- sf. City identification signs shall be maintained and kept in good repair. The display surface shall be kept clean, neatly maintained, and free from rust or corrosion. Any cracked, broken surfaces, malfunctioning lights, missing sign copy, or other unmaintained or damaged portion of a sign shall be repaired or replaced within 30 calendar days following notification by the City. Noncompliance with such a request shall constitute a nuisance and penalties may be assessed.
- ts. Any sign agreement shall include a provision requiring the billboard owner to demonstrate that they have made reasonable efforts to solicit advertising from local businesses and nonprofits, including discounts and incentives during periods where other advertising cannot be obtained. Local businesses are defined as any business located within the City limits.
- ut. Enforcement provisions shall provide for written notice of violations and the opportunity to cure breaches, the potential to recover liquidated damages, the posting of securities where repeated violations occur, and the right to recover

attorney fees and costs in the event that administrative or legal action is required.

- vi. Any other provisions contained in the lease agreement, development agreement, or other agreement that the City deems to be appropriate to protect the public health, safety, and welfare of the City.

(Zoning Ord. dated 1/31/06, § 9109.11; Ord. No. 1377, § 2)

(Ord. No. 1419, § 5, 1-26-10; Ord. No. 1424, § 3.7, 7-13-10; Ord. No. 1447, §§ 3—6, 2-14-12; Ord. No. 1487, § 3.2, 4-28-15; Ord. No. 1530, § 4K, 9-25-18)

#### 17.36.120 - Sign design guidelines.

A. General. The following design guidelines shall be consulted prior to developing signs for any project. Unless there is a compelling reason, these design guidelines shall be followed. If a guideline is waived, the mayor and city council shall be notified. An appeal, which does not require a fee, may be filed by the mayor or any council person within fifteen days of the waiver approval.

1. Use a brief message: The fewer the words, the more effective the sign. A sign with a brief, succinct message is simpler and faster to read, looks cleaner and is more attractive.
2. Avoid hard-to-read, overly intricate typefaces: These typefaces are difficult to read and reduce the sign's ability to communicate.
3. Avoid faddish and bizarre typefaces: Such typefaces may look good today, but soon go out of style. The image conveyed may quickly become that of a dated and unfashionable business.
4. Sign colors and materials: should be selected to contribute to legibility and design integrity. Even the most carefully thought out sign may be unattractive and a poor communicator because of poor color selection. Day-glo colors must be avoided.
5. Use significant contrast between the background and letter or symbol colors: If there is little contrast between the brightness or hue of the message of a sign and its background, it will be difficult to read.
6. Avoid too many different colors on a sign: Too many colors overwhelm the basic function of communication. The colors compete with content for the viewer's attention. Limited use of the accent colors can increase legibility, while large areas of competing colors tend to confuse and disturb.
7. Place signs to indicate the location of access to a business: Signs should be placed at or near the entrance to a building or site to indicate the most direct access to the business.
8. Place signs consistent with the proportions of scale of building elements within the facade: Within a building facade, the sign may be placed in different areas. A particular sign may fit well on a plain wall area, but would overpower the finer scale and proportion of the lower storefront. A sign which is appropriate near the building entry may look tiny and out of place above the ground level.



9. Place wall signs to establish rhythm across the facade, scale and proportion where such elements are weak. In many buildings that have a monolithic or plain facade, signs can establish or continue appropriate design rhythm, scale, and proportion.
10. Avoid signs with strange shapes: Signs that are unnecessarily narrow or oddly shaped can restrict the legibility of the message. If an unusual shape is not symbolic, it is probably confusing.
11. Carefully consider the proportion of letter area to overall sign background area: If letters take up too much sign, they may be harder to read. Large letters are not necessarily more legible than smaller ones. A general rule is that letters should not appear to occupy more than seventy-five percent of the sign panel area.
12. Make signs smaller if they are oriented to pedestrians: The pedestrian-oriented sign is usually read from a distance of fifteen to twenty feet; the vehicle-oriented sign is viewed from a much greater distance. The closer a sign's viewing distance, the smaller that sign need be.

#### B. Wall or Fascia Signs.

1. Building wall and fascia signs should be compatible with the predominant visual elements of the building. Commercial centers, offices, and other similar facilities are required to be part of a sign program in accordance with the provisions of this chapter.
2. Where there is more than one sign, all signs should be complementary to each other in the following ways:
  - a. Type of construction materials (cabinet, sign copy, supports, etc.)
  - b. Letter size and style of copy
  - c. Method used for supporting sign (wall or ground base)
  - d. Configuration of sign area
  - e. Shape to total sign and related components
3. The use of graphics consistent with the nature of the product to be advertised is encouraged, i.e., hammer or saw symbol for a hardware store, mortar and pestle for a drug store.
4. Direct and indirect lighting methods are allowed provided that they are not harsh or unnecessarily bright. The use of can-type box signs with translucent backlit panels are less desirable. Panels should be opaque if a can-type sign is used and only the lettering should appear to be lighted. The overspill of light should be negligible.
5. The use of backlit individually cut letter signs is strongly encouraged.
6. The use of permanent sale or come-on signs is prohibited.
7. The identification of each building or store's address in six-inch high numbers over the main entry doorway or within ten feet of the main entry is encouraged.

#### C. Monument Signs.

1. Monument signs are intended to provide street addresses, and identification for the commercial center development as a whole and for up to three major tenants.
2. All tenant signs should be limited in size to the width of the architectural features of the sign and shall be uniform in size and color.

3. A minimum of ten percent of the sign area of monument signs for center developments should be devoted to identification of the center or building by address or name.
4. Monument signs should be placed perpendicular to approaching vehicular traffic.
5. Each monument sign should be located within a planted landscaped area which is of a shape and design that will provide a compatible setting and ground definition to the sign, incorporating the following ratio of landscape area to total sign area:
  - a. Monument: Four square feet of landscaped area for each square foot of sign area (one side only).
  - b. Directory: Two square feet of landscaped area for each square foot of sign area.

(Zoning Ord. dated 1/31/06, § 9109.12.)

#### 17.36.130 - Nonconforming signs.

- A. A legally established sign which fails to conform to this chapter shall be allowed continued use, except that the sign shall not be:
  1. Structurally altered so as to extend its useful life.
  2. Expanded, moved, or relocated.
  3. Re-established after a change in use.
  4. Re-established after a business has been abandoned for one hundred twenty days or more.
  5. Re-established after damage or destruction of more than fifty percent.
- B. Sign copy and sign faces may be changed on nonconforming signs when there is no change in use of the site or when only a portion of a multiple tenant sign is being changed.
- C. Any non-conforming sign shall be required to be brought into conformance or abated.

(Zoning Ord. dated 1/31/06, § 9109.13.)

#### 17.36.140 - Removal of illegal and nonconforming signs.

- A. The director shall remove or cause the removal of any fixed, permanent sign constructed, placed or maintained in violation of this chapter, after thirty days following the date of mailing of registered or certified written notice to the owner of the sign, if known, at the last known address or to the owner of the property as shown on the latest assessment roll, or to the occupant of the property at the property address.
- B. The notice shall describe the sign and specify the violation involved, and indicate that the sign will be removed if the violation is not corrected within thirty days. If the owner disagrees with the opinion of the director, the owner may, within the said thirty-day period request a hearing before the planning commission to determine the existence of a violation.
- C. If salvageable in the opinion of the director, signs removed by the Director pursuant to this chapter shall be stored for a period of sixty days, during which time they may be recovered by the owner upon payment to the city for costs of removal and storage. If not recovered prior to expiration of the sixty-day period, the sign and supporting structures shall be

declared abandoned and title thereto shall vest to the city, and the cost of removal shall be billed to the owner or lien placed on the property upon which said sign was erected.

(Zoning Ord. dated 1/31/06, § 9109.14.)

17.36.150 - Reserved.

**Editor's note**— Sec. 3 of Ord. No. 1447, adopted Feb. 14, 2012, repealed zoning section 9109.15 from which this section 17.36.150 derived. Former § 17.36.150 pertained to establishing compliance and was amended by Ord. 1377.

17.36.160 - Inventory and abatement—Variances—Penalties.

- A. Inventory and Abatement. Within six months from the date of adoption of this zoning ordinance, the city shall commence a program to inventory and identify illegal or abandoned signs within its jurisdiction. Within sixty days after this six-month period, the city may commence abatement of identified illegal or abandoned signs. If a previously legal sign is merely nonconforming, however, the terms of section 17.36.150 of this zoning ordinance titled "Establishing Compliance," shall apply.
- B. Variances. Variances from these sign ordinances are strongly discouraged. However, where results inconsistent with the general purposes of this ordinance would occur from its strict literal interpretation and enforcement, the planning commission may grant a variance therefrom upon such terms and conditions as it deems necessary.
- C. Penalties. Each violation of this ordinance or any regulation, order or ruling promulgated or made hereunder, shall be punishable by a fine of not more than two hundred dollars per day, with each calendar day in violation, constituting a separate offense.

(Zoning Ord. dated 1/31/06, § 9109.16.)

17.36.170 - Murals.

Murals shall be allowed by permit reviewed by the beautification and mural council of the Banning Chamber of Commerce and permitted by the city's community development department. Applications shall be on a form devised by the community development department. A permit for a mural will be granted when the following conditions have been satisfied:

- A. Completed application;
- B. Sign permit fee paid;
- C. Approved by the beautification and mural council of the Banning Chamber of Commerce;
- D. The mural shall not cause a pedestrian or vehicular safety hazard;
- E. The mural shall be applied to the wall of a building; and
- F. The mural shall be maintained.

(Ord. No. 1382, § 3 (part).)

17.36.180 - Signs within adopted specific plan areas.

Signs within adopted specific plan areas shall conform to the sign requirements as indicated within the individual specific plan. However, in the event sign requirements are not provided in the individual specific plans, all signs within the specific plan areas shall conform to the provisions of chapter 17.36. If the land use within the specific plan is not specifically identified in the zoning ordinance, the most appropriate (closely related) use of the area shall apply, as determined by the community development director.

(Ord. No. 1493, § 3(2), 4-12-16)

17.36.190 - Flags, banners and pennants on city-owned light poles.

Notwithstanding section 17.36.070, the city of Banning may install flags, banners, and/or pennants on city-owned utility poles. The city manager shall establish a written banner program to regulate the installation of flags, banners, and pennants on city-owned utility poles. Banners and pennants shall be installed in compliance with the banner program established by the city manager.

(Ord. No. 1493, § 3(2), 4-12-16)

## **Exhibit B**

Notice of Exemption  
(See Attachment No. 6)

## **ATTACHMENT 5**

Public Hearing Notice



**NOTICE OF INTENT TO ADOPT A CATEGORICAL EXEMPTION AND NOTICE OF PUBLIC HEARING FOR ZONING TEXT AMENDMENT (ZTA) NO. 19-97502 AMENDING CHAPTER 17.12 "COMMERCIAL AND INDUSTRIAL DISTRICTS" AND 17.36 "SIGN REGULATIONS" OF TITLE 17 "ZONING" OF THE BANNING MUNICIPAL CODE TO AUTHORIZE DIGITAL ADVERTISING DISPLAYS IN THE DOWNTOWN COMMERCIAL DISTRICT, SUBJECT TO A CONDITIONAL USE PERMIT.**

**NOTICE IS HEREBY GIVEN** of a public hearing before the City of Banning Planning Commission to be held on Wednesday, April 3, 2019, at 6:30 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider proposed Zoning Text Amendment (ZTA) No. 19-97502 to amend Chapter 17.12 "Commercial and Industrial Districts" and 17.36 "Sign Regulations" of Title 17 "Zoning" of the Banning Municipal Code to authorize digital advertising displays in the Downtown Commercial District, subject to the approval of a Conditional Use Permit.

City staff has determined that the proposed Zoning Text Amendment is not subject to the California Environmental Quality Act ("CEQA") pursuant to the State CEQA Guidelines Section 15060(c)(3) because it is not a project as defined by the CEQA Guidelines Section 15378. Section 15378 states that a Project is exempt if it involves an activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. The Zoning Text Amendment will involve the use of city-owned property, to be utilized by the City of Banning. In addition, adoption of the Zoning Text Amendment does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

Information regarding the Categorical Exemption, Zoning Text Amendment, and all relevant materials can be obtained by contacting the City's Community Development Department at (951) 922-3125, or by visiting the City Hall located at 99 East Ramsey Street, Banning during regular business hours. You may also go to the City of Banning website at <http://www.ci.banning.ca.us/>.

All parties interested in speaking either in support of or in opposition of this item are invited to attend the hearing, or to send their written comments to the Community Development Department, City of Banning at P.O. Box 998, Banning, California, 92220.

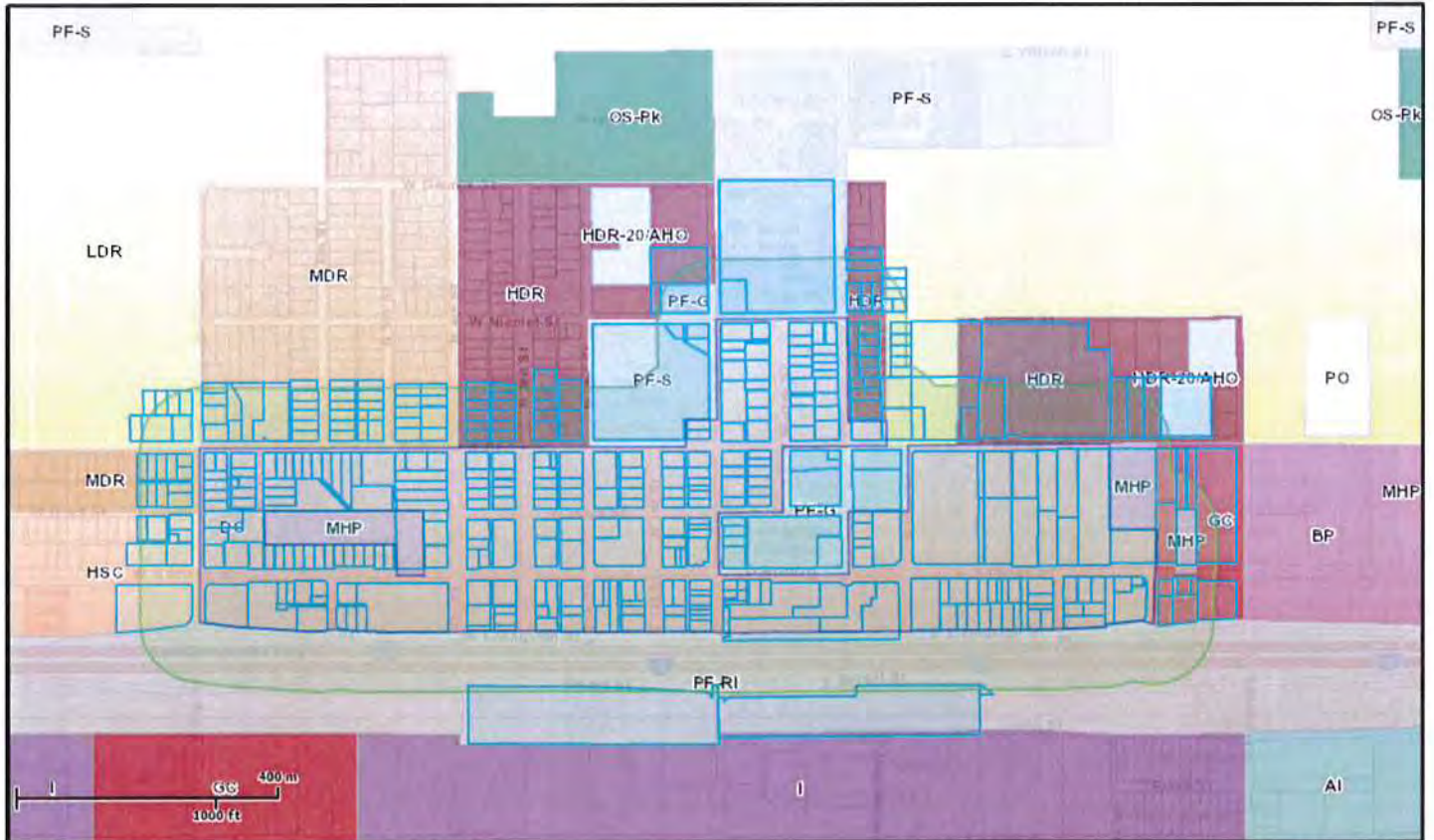
If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the Planning Commission makes its decision on the proposal; or, that you or someone else raised at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009).

**BY ORDER OF THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA**

Adam B. Rush, AICP  
Community Development Director

Dated: 03/19/2019  
Publish: 03/22/2019

## Downtown Commercial Zone (DC)



1" = 752 ft	300' radius map	03/20/2019		
This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy, please contact Banning staff for the most up-to-date information.				

CURRENT RESIDENT  
93 W NICOLET ST  
BANNING CA 92220

CURRENT RESIDENT  
876 W JACINTO VIEW RD  
BANNING CA 92220

CURRENT RESIDENT  
856 W JACINTO VIEW RD  
BANNING CA 92220

CURRENT RESIDENT  
836 W JACINTO VIEW RD  
BANNING CA 92220

CURRENT RESIDENT  
816 W JACINTO VIEW RD  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
882 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
856 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
850 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
842 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
820 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
153 N 8TH ST  
BANNING CA 92220

CURRENT RESIDENT  
899 W HAYS ST  
BANNING CA 92220

CURRENT RESIDENT  
857 W HAYS ST  
BANNING CA 92220

CURRENT RESIDENT  
855 W HAYS ST  
BANNING CA 92220

CURRENT RESIDENT  
137 N 8TH ST  
BANNING CA 92220

CURRENT RESIDENT  
119 N 8TH ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
242 N 8TH ST  
BANNING CA 92220

CURRENT RESIDENT  
274 N 8TH ST  
BANNING CA 92220

CURRENT RESIDENT  
290 N 8TH ST  
BANNING CA 92220

CURRENT RESIDENT  
299 N 6TH ST  
BANNING CA 92220

CURRENT RESIDENT  
283 N 6TH ST  
BANNING CA 92220

CURRENT RESIDENT  
269 N 6TH ST  
BANNING CA 92220

CURRENT RESIDENT  
247 N 6TH ST  
BANNING CA 92220

CURRENT RESIDENT  
233 N 6TH ST  
BANNING CA 92220

CURRENT RESIDENT  
627 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
745 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
298 N 6TH ST  
BANNING CA 92220

CURRENT RESIDENT  
282 N 6TH ST  
BANNING CA 92220

CURRENT RESIDENT  
266 N 6TH ST  
BANNING CA 92220

CURRENT RESIDENT  
244 N 6TH ST  
BANNING CA 92220

CURRENT RESIDENT  
234 N 6TH ST  
BANNING CA 92220

CURRENT RESIDENT  
561 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
543 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
517 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
249 N 5TH ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
265 N 5TH ST  
BANNING CA 92220

CURRENT RESIDENT  
279 N 5TH ST  
BANNING CA 92220

CURRENT RESIDENT  
297 N 5TH ST  
BANNING CA 92220

CURRENT RESIDENT  
286 N 5TH ST  
BANNING CA 92220

CURRENT RESIDENT  
276 N 5TH ST  
BANNING CA 92220

CURRENT RESIDENT  
254 N 5TH ST  
BANNING CA 92220

CURRENT RESIDENT  
240 N 5TH ST  
BANNING CA 92220

CURRENT RESIDENT  
485 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
217 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
247 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
277 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
283 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
292 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
268 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
250 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
234 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
218 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
215 N 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
233 N 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
251 N 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
267 N 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
277 N 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
291 N 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
280 N 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
266 N 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
252 N 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
52 W NICOLET ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
127 N 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
145 N 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
153 N 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
182 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
162 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
150 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
132 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
116 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
181 N 2ND ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
142 N 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
128 N 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
180 N 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
162 N 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
111 N 1ST ST  
BANNING CA 92220

CURRENT RESIDENT  
125 N 1ST ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
157 N 1ST ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0



CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
178 N 8TH ST  
BANNING CA 92220

CURRENT RESIDENT  
760 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
158 N 8TH ST  
BANNING CA 92220

CURRENT RESIDENT  
140 N 8TH ST  
BANNING CA 92220

CURRENT RESIDENT  
122 N 8TH ST  
BANNING CA 92220

CURRENT RESIDENT  
108 N 8TH ST  
BANNING CA 92220

CURRENT RESIDENT  
113 N 7TH ST  
BANNING CA 92220

CURRENT RESIDENT  
131 N 7TH ST  
BANNING CA 92220

CURRENT RESIDENT  
145 N 7TH ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
157 N 7TH ST  
BANNING CA 92220

CURRENT RESIDENT  
680 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
142 N 7TH ST  
BANNING CA 92220

CURRENT RESIDENT  
134 N 7TH ST  
BANNING CA 92220

CURRENT RESIDENT  
116 N 7TH ST  
BANNING CA 92220

CURRENT RESIDENT  
102 N 7TH ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
670 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
660 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
640 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
632 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
610 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
596 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
576 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
568 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
548 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
530 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
155 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
141 N 4TH ST  
BANNING CA 92220



CURRENT RESIDENT  
127 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
111 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
99 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
486 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
181 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
299 N MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
245 MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
235 MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
384 N MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
366 N MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
350 N MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
347 N ALESSANDRO RD  
BANNING CA 92220

CURRENT RESIDENT  
334 N MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
339 N ALESSANDRO RD  
BANNING CA 92220

CURRENT RESIDENT  
316 N MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
329 N ALESSANDRO RD  
BANNING CA 92220

CURRENT RESIDENT  
292 N MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
283 N ALESSANDRO RD  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
182 E NICOLET ST  
BANNING CA 92220

CURRENT RESIDENT  
158 E NICOLET ST  
BANNING CA 92220

CURRENT RESIDENT  
359 N ALESSANDRO RD  
BANNING CA 92220

CURRENT RESIDENT  
247 ALESSANDRO RD  
BANNING CA 92220

CURRENT RESIDENT  
381 N FAY AVE  
BANNING CA 92220

CURRENT RESIDENT  
361 FAY AVE  
BANNING CA 92220

CURRENT RESIDENT  
331 FAY AVE  
BANNING CA 92220

CURRENT RESIDENT  
321 FAY AVE  
BANNING CA 92220

CURRENT RESIDENT  
311 FAY AVE  
BANNING CA 92220

CURRENT RESIDENT  
312 FAY AVE  
BANNING CA 92220

CURRENT RESIDENT  
326 FAY AVE  
BANNING CA 92220

CURRENT RESIDENT  
344 FAY AVE  
BANNING CA 92220

CURRENT RESIDENT  
364 FAY AVE  
BANNING CA 92220

CURRENT RESIDENT  
376 FAY AVE  
BANNING CA 92220

CURRENT RESIDENT  
296 N ALESSANDRO RD  
BANNING CA 92220

CURRENT RESIDENT  
303 FAY AVE  
BANNING CA 92220

CURRENT RESIDENT  
276 N ALESSANDRO RD  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
315 E WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
381 E WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
607 E WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
725 E WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
467 N SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
833 WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
860 W HAYS ST  
BANNING CA 92220

CURRENT RESIDENT  
55 N 8TH ST  
BANNING CA 92220

CURRENT RESIDENT  
81 N 8TH ST  
BANNING CA 92220

CURRENT RESIDENT  
827 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
887 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
771 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
729 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
675 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
235 N 2ND ST  
BANNING CA 92220

CURRENT RESIDENT  
305 N 2ND ST  
BANNING CA 92220

CURRENT RESIDENT  
290 N 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
375 N SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
235 N SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
221 N SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
115 N 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
109 N 2ND ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
177 N 1ST ST  
BANNING CA 92220

CURRENT RESIDENT  
170 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
175 W HAYS ST  
BANNING CA 92220

CURRENT RESIDENT  
111 N SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
127 N SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
135 N SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
149 N SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
171 N SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
182 N 1ST ST  
BANNING CA 92220

CURRENT RESIDENT  
144 N 1ST ST  
BANNING CA 92220

CURRENT RESIDENT  
141 N SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
90 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
56 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
321 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
363 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
225 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
238 W HAYS ST  
BANNING CA 92220

CURRENT RESIDENT  
86 N 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
263 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
161 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
89 N SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
66 N 1ST ST  
BANNING CA 92220

CURRENT RESIDENT  
50 N 1ST ST  
BANNING CA 92220

CURRENT RESIDENT  
61 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
55 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
65 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
41 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
720 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
508 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
65 N 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
437 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
477 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
501 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
515 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
521 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
553 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
553 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
575 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
603 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
617 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
647 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
663 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
693 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
711 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
62 N 8TH ST  
BANNING CA 92220

CURRENT RESIDENT  
80 N 8TH ST  
BANNING CA 92220

CURRENT RESIDENT  
89 N EXCELSIOR CT  
BANNING CA 92220

CURRENT RESIDENT  
783 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
454 W WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
583 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
755 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
806 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
646 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
614 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
45 S 6TH ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
730 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
670 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
660 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
770 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
572 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
63 S 4TH ST  
BANNING CA 92220

CURRENT RESIDENT  
557 W LIVINGSTON ST  
BANNING CA 92220

CURRENT RESIDENT  
579 W LIVINGSTON ST  
BANNING CA 92220

CURRENT RESIDENT  
583 W LIVINGSTON ST  
BANNING CA 92220

CURRENT RESIDENT  
376 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
69 S 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
57 S 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
330 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
270 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
260 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
60 S 3RD ST  
BANNING CA 92220

CURRENT RESIDENT  
271 W LIVINGSTON ST  
BANNING CA 92220

CURRENT RESIDENT  
65 S 2ND ST  
BANNING CA 92220

CURRENT RESIDENT  
53 S 2ND ST  
BANNING CA 92220

CURRENT RESIDENT  
240 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
182 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
170 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
166 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
55 S 1ST ST  
BANNING CA 92220

CURRENT RESIDENT  
45 S 1ST ST  
BANNING CA 92220

CURRENT RESIDENT  
116 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
132 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
50 S 1ST ST  
BANNING CA 92220

CURRENT RESIDENT  
70 S 1ST ST  
BANNING CA 92220

CURRENT RESIDENT  
99 S SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
77 S SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
53 S SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
39 S SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
33 S SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
42 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
74 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
60 W RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
50 E NICOLET ST  
BANNING CA 92220

CURRENT RESIDENT  
381 N MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
344 N SAN GORGONIO AVE  
BANNING CA 92220



CURRENT RESIDENT  
349 N MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
333 N MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
210 N SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
225 N MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
266 N SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
250 N MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
273 N ALESSANDRO RD  
BANNING CA 92220

CURRENT RESIDENT  
230 N MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
220 N MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
258 N ALESSANDRO RD  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
208 E NICOLET ST  
BANNING CA 92220

CURRENT RESIDENT  
314 N ALESSANDRO RD  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
380 E NICOLET ST  
BANNING CA 92220

CURRENT RESIDENT  
403 E WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
655 E WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
456 E NICHOLE ST  
BANNING CA 92220

CURRENT RESIDENT  
112 N SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
187 N MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
173 N MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
155 N MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
145 N MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
129 N MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
111 N MURRAY ST  
BANNING CA 92220

CURRENT RESIDENT  
128 N SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
25 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
52 N SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
70 N SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
84 N SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
125 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
181 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
176 N ALESSANDRO RD  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
50 N ALESSANDRO RD  
BANNING CA 92220

CURRENT RESIDENT  
215 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
94 N ALESSANDRO RD  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
255 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
311 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
447 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
492 E WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
521 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
553 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
621 E WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
685 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
710 E WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
724 E WILLIAMS ST  
BANNING CA 92220

CURRENT RESIDENT  
719 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
635 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
44 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
40 S SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
66 S SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
58 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
12 S SAN GORGONIO AVE  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
347 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
374 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
384 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
355 E LIVINGSTON ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
401 E LIVINGSTON ST  
BANNING CA 92220

CURRENT RESIDENT  
402 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
422 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
424 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
436 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
462 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
401 E LIVINGSTON ST  
BANNING CA 92220

CURRENT RESIDENT  
425 E LIVINGSTON ST  
BANNING CA 92220

CURRENT RESIDENT  
449 E LIVINGSTON ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
472 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
59 S ALOLA ST  
BANNING CA 92220

CURRENT RESIDENT  
475 E LIVINGSTON ST  
BANNING CA 92220

CURRENT RESIDENT  
489 E LIVINGSTON ST  
BANNING CA 92220

CURRENT RESIDENT  
442 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
590 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
616 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
696 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
724 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
676 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
62 LIVINGSTON ST  
BANNING CA 92220

CURRENT RESIDENT  
780 E RAMSEY ST  
BANNING CA 92220

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
CA 0

CURRENT RESIDENT  
492 N ALESSANDRO RD  
BANNING CA 92220

CURRENT RESIDENT  
478 N ALESSANDRO ST  
BANNING CA 92220

CURRENT RESIDENT  
215 E NICOLET ST  
BANNING CA 92220

CURRENT RESIDENT  
231 E NICOLET ST  
BANNING CA 92220

CURRENT RESIDENT  
253 E NICOLET ST  
BANNING CA 92220

CURRENT RESIDENT  
463 MARTIN ST  
BANNING CA 92220

CURRENT RESIDENT  
451 MARTIN LN  
BANNING CA 92220

CURRENT RESIDENT  
435 N MARTIN LN  
BANNING CA 92220

CURRENT RESIDENT  
275 E NICOLET ST  
BANNING CA 92220

CURRENT RESIDENT  
417 MARTIN LN  
BANNING CA 92220

CURRENT RESIDENT  
462 N ALESSANDRO RD  
BANNING CA 92220

## **ATTACHMENT 6**

Notice of Exemption (NOE)



## Notice of Exemption

## Appendix E

To: Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044

County Clerk

County of, Riverside

2724 Gateway Drive

Riverside, CA, 92507

From: (Public Agency): City of Banning

99 East Ramsey Street

Banning, CA, 92220

(Address)

Project Title: Zoning Text Amendment 19-97502, amending Sec. amending Chapters 17.12 and 17.36.

Project Applicant: City of Banning Community Development Department

Project Location - Specific:

Downtown Commercial Zoning District

Project Location - City: Banning

Project Location - County: Riverside

Description of Nature, Purpose and Beneficiaries of Project:

Zoning Text Amendment 19-97502 which amends Chapter 17.12 and 17.36 of the Banning Municipal Code (BMC) to authorize Electronic Message Centers in the Downtown Commercial Zoning District, subject to a Conditional Use Permit (CUP).

Name of Public Agency Approving Project: City of Banning

Name of Person or Agency Carrying Out Project: City of Banning

Exempt Status: **(check one):**

☐ Ministerial (Sec. 21080(b)(1); 15268);

☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));

☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));

☒ Categorical Exemption. State type and section number: 15270

☐ Statutory Exemptions. State code number: \_\_\_\_\_

Reasons why project is exempt:

Section 15270; which allows for projects that are disapproved or rejected by a public agency to be considered exempt. The Planning Commission is recommending that the proposed Zoning Text Amendment cannot be approved, based upon the findings and conclusions incorporated in the City Council Resolution attached herein and thus is making a finding pursuant to CEQA Guidelines Section 15270.

Lead Agency

Contact Person: Adam B. Rush, AICP

Area Code/Telephone/Extension: (951) 922-3131

**If filed by applicant:**

1. Attach certified document of exemption finding.

2. Has a Notice of Exemption been filed by the public agency approving the project? ☒ Yes ☐ No

Signature: \_\_\_\_\_ Date: 06/11/2019 Title: Community Dev. Dir.

☒ Signed by Lead Agency ☒ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.

Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: \_\_\_\_\_

## Notice of Exemption

## Appendix E

**To:** Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044

County Clerk

County of, Riverside

2724 Gateway Drive

Riverside, CA, 92507

**From:** (Public Agency): City of Banning

99 East Ramsey Street

Banning, CA, 92220

(Address)

Project Title: Zoning Text Amendment 19-97502, amending Sec. amending Chapters 17.12 and 17.36.

Project Applicant: City of Banning Community Development Department

Project Location - Specific:

Downtown Commercial Zoning District

Project Location - City: Banning

Project Location - County: Riverside

Description of Nature, Purpose and Beneficiaries of Project:

Zoning Text Amendment 19-97502 which amends Chapter 17.12 and 17.36 of the Banning Municipal Code (BMC) to authorize Electronic Message Centers in the Downtown Commercial Zoning District, subject to a Conditional Use Permit (CUP).

Name of Public Agency Approving Project: City of Banning

Name of Person or Agency Carrying Out Project: City of Banning

Exempt Status: **(check one):**

☒ Ministerial (Sec. 21080(b)(1); 15268);

☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));

☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));

☐ Categorical Exemption. State type and section number: \_\_\_\_\_

☐ Statutory Exemptions. State code number: \_\_\_\_\_

Reasons why project is exempt:

The project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(2); (2) In light of the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and since it can be seen with certainty there is no possibility that the activity in question may have a significant effect on the environment.

Lead Agency

Contact Person: Adam B. Rush, AICP

Area Code/Telephone/Extension: (951) 922-3131

**If filed by applicant:**

1. Attach certified document of exemption finding.

2. Has a Notice of Exemption been filed by the public agency approving the project? ☒ Yes ☐ No

Signature: \_\_\_\_\_ Date: 06/11/2019 Title: Community Dev. Dir.

☒ Signed by Lead Agency ☒ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.

Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: \_\_\_\_\_

**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**



**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**PREPARED BY:** Adam B. Rush, Community Development Director

**MEETING DATE:** June 11, 2019

**SUBJECT:** RESOLUTION ADOPTING A NOTICE OF EXEMPTION AND APPROVING GENERAL PLAN AMENDMENT TO INCORPORATE THE CITY OF BANNING'S 2017 LOCAL HAZARD MITIGATION PLAN (LHMP) INTO THE SAFETY ELEMENT OF THE GENERAL PLAN.

---

**RECOMMENDED ACTION:**

The City Council hereby:

Adopt Resolution, which makes the necessary findings that General Plan Amendment (GPA) No. 19-2501 is exempt from the California Environmental Quality Act (CEQA) and approves the GPA, amending the Safety Element of the City's General Plan to incorporate the City of Banning's 2017 Local Hazard Mitigation Plan (LHMP) into the Safety Element of the General Plan.

**PLANNING COMMISSION ACTION:**

On May 1, 2019, the Planning Commission conducted a dully noticed public hearing and recommended that the City Council find that the Project is exempt from the California Environmental Quality Act (CEQA) and to approve the General Plan Amendment amending the Safety Element of the City's General Plan to incorporate the City of Banning's 2017 Local Hazard Mitigation Plan (LHMP) into the Safety Element of the General Plan.

**PROJECT DESCRIPTION:**

The Project is a city-initiated General Plan Amendment which proposes to modify the Safety Element, of the City of Banning's General Plan, to incorporate the 2017

Local Hazard Mitigation Plan (LHMP) in order to comply with Assembly Bill (AB) No. 2140, which was signed by the Governor in 2004, and implements the Federal Disaster Mitigation Act (DMA) of 2000 and requires that all Charter and General Law Cities in California to incorporate the jurisdiction's Hazard Mitigation Plan into the Safety Element to qualify for the maximum level of reimbursement funding in the event of a declared emergency and/or natural disaster.

### **BACKGROUND:**

In 2004, the City Council adopted the Local Hazard Mitigation Plan (LHMP). Subsequent to the Council's adoption, this plan was approved by the Federal Emergency Management Agency (FEMA) and transmitted to the Riverside County Office of Emergency Services (OES). In order for Banning to be eligible for the maximum level of reimbursement funding, from the State of California, for expenses incurred as a result of the local hazards, natural disasters, and/or declared public safety emergencies; State law requires that the LHMP be incorporated into the City's Safety Element of the City General Plan pursuant to AB2140. Therefore, the proposed GPA will incorporate the LHMP into the Safety Element. Staff is not proposing any revisions to the LHMP in conjunction with the proposed General Plan Amendment. The only changes, to the General Plan Safety Element, are to amend the text to incorporate the Local Hazard Mitigation Plan and to add it to the General Plan Safety Element. Attached herein is the City's 2017 LHMP for reference and review.

### **JUSTIFICATION:**

Assembly Bill (AB) No. 2140 limits the state's share for any eligible project to no more than 75% of the total state eligible costs. AB 2140 would prohibit the state share for any eligible project from exceeding 75% of total state eligible costs unless the local agency is located within a City and has adopted a Local Hazard Mitigation Plan (LHMP) in accordance with the Federal Disaster Mitigation Act of 2000, as part of the Safety Element of the General Plan, in which case the Legislature may provide for a state share of local costs that exceed 75% of total state eligible costs.

### **ENVIRONMENTAL DETERMINATION:**

#### **A. California Environmental Quality Act (CEQA)**

For the following reasons, incorporating the LHMP into the Safety Element of the Banning County General Plan is exempt from the California Environmental Quality Act (CEQA): (1) Since the proposed activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, as such, the project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(2); (2) In light of the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and since it can be seen with certainty that there is no possibility that



the activity in question may have a significant effect on the environment, the activity is not subject to CEQA pursuant to CEQA Guidelines Section 15061(b)(3); and (3) because the implementation of the LHMP will include actions taken by regulatory agencies to maintain and protect natural resources and the environment, the project is categorically exempt from CEQA pursuant to CEQA Guidelines Sections 15307 and 15308.

#### Multiple Species Habitat Conservation Plan (MSHCP)

An amendment to the General Plan Safety Element does not relate to any one physical project and are not subject to the MSHCP. Further, no specific projects will be triggered as a result of incorporating the LHMP into the City's General Plan; rather the proposed General Plan Amendment is an effort to limit the City's financial liability in the unlikely event of a natural disaster, city emergency, or public safety event. Such events are not considered Projects under of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

#### **ADDITIONAL REQUIRED FINDINGS:**

The California Government Code and Section 17.64.070 (Findings) of the City of Banning Municipal Code require that General Plan Amendments meet certain findings prior to the approval by the City Council. The following findings are provided in support of the approval of the General Plan Amendment No. 19-2501

**Finding No.: 1:** Proposed General Plan Amendment is internally consistent with the General Plan

**Findings of Fact:** The proposed General Plan Amendment will incorporate the City's 2017 Local Hazard Mitigation Plan (LHMP) into the City's General Plan; more specifically, into the Safety Element pursuant to state law. The LHMP details hazard mitigation controls and procedures to protect the health, safety, and welfare of the City, its residents, patrons, and visitors in the event of a natural disaster or citywide emergency or threat. The LHMP achieves similar goals and objectives to those policies within the City's Safety Element.

The LHMP is consistent, and implements, the following Goals and Policies of the Environmental Hazards Element:

Goal 1: Increased protection and safety of human life, land, and property from the effects of seismic and geotechnical hazards.

- Policy 1: The City shall establish and maintain an information database containing maps and other information which describe seismic and other geotechnical hazards occurring within the City boundaries, sphere-of-influence and planning area.



- Such maps and information has been incorporated into the LHMP, for inclusion and adoption into the General Plan.

- Policy 5: The City shall coordinate and cooperate with public and quasi-public agencies to assure the continued functionality of major utility systems in the event of a major earthquake.

- The LHMP sets forth mutual-aid procedures between the City of Banning, Riverside County Fire, CalFire, and the Morongo Tribal Government

**Finding No. 2:** Proposed General Plan Amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City. The LHMP implements Policy 6, of the Public Facilities Chapter, which states as follows: *Critical structures and facilities (including the civic center, hospitals, fire stations, police stations, schools and major communications facilities) shall be restricted from geologically and hydrologically hazardous areas.*

**Finding No.3:** Proposed General Plan Amendment would maintain the appropriate balance of land uses within the City.

The proposed General Plan Amendment will not impact or affect any aspect of the City's General Plan Land Use Element. Incorporating the LHMP into the Safety Element will ensure the protection of the City's public infrastructure.

**Finding No. 4:** That in the case of an amendment to the General Plan Land Use Map, the subject parcels (s) is physically suitable (including, but not limited to access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints), for the requested land use designations(s) and the anticipated land use developments.

The proposed General Plan Amendment will not impact or affect any aspect of the City's General Plan Land Use Element. Incorporating the LHMP into the Safety Element will ensure the protection of the City's public infrastructure.

#### **FISCAL IMPACT:**

The review, processing, and staff time dedicated to this entitlement process are covered through the payment of development review fees; which are paid by the applicant.

#### **OPTIONS:**

1. Approve as recommended
2. Do not approve and provide alternative direction

**ATTACHMENTS:**

1. Planning Commission Staff Report
2. Planning Commission Minutes (May 1, 2019)
3. City Council Resolution No. 2019-\_\_\_\_
4. Public Hearing Notice
5. Notice of Exemption (NOE)

Approved by:

  
\_\_\_\_\_  
Douglas Schulze  
City Manager

## **ATTACHMENT 1**

Planning Commission Staff Report



**CITY OF BANNING  
PLANNING COMMISSION  
STAFF REPORT**

**TO:** PLANNING COMMISSION

**FROM:** Adam B. Rush, Community Development Director

**MEETING DATE:** May 1, 2019

**SUBJECT:** Resolution 2019-11, Approving General Plan Amendment to the Safety Element of the City of Banning General Plan to incorporate the 2017 Local Hazard Mitigation Plan (LHMP).

---

**RECOMMENDED ACTION:**

Staff recommends the City Council adopt Resolution 2019-11, Amendment to the Safety Element of the City's General Plan to incorporate the City of Banning's 2017 Local Hazard Mitigation Plan (LHMP) into the Safety Element of the General Plan.

**BACKGROUND:**

In 2004, the City Council for the City of Banning adopted the City's Local Hazard Mitigation Plan (LHMP). This plan was approved by the Federal Emergency Management Agency (FEMA) subsequently thereafter. In order for the City to be eligible for the maximum level of reimbursements from the State of California, for expenses incurred as a result of the local hazards, natural disasters, and/or public safety emergencies, State law requires that the LHMP be incorporated into the Safety Element of the City General Plan. Therefore, the proposed General Plan Amendment (GPA) will incorporate the LHMP into the Safety Element of the General Plan. No revisions to the adopted LHMP are proposed in conjunction with the proposed amendment to the Element referenced above. The only amendment to the Safety Element is to amend the text to state that the LHMP is incorporated by reference. Attached is the proposed text amendment to the Safety Element as well as a link to the previously adopted HMP.

**JUSTIFICATION:**

Assembly Bill (AB) No. 2140 limits the state share for any eligible project to no more than 75% of the total state eligible costs. AB 2140 would prohibit the state share for any eligible project from exceeding 75% of total state eligible costs unless the local agency is located within a City and has adopted a Local Hazard Mitigation Plan (LHMP) in accordance with the federal Disaster Mitigation Act of 2000, as part of the safety element of its general

plan, in which case the Legislature may provide for a state share of local costs that exceed 75% of total state eligible costs.

By not recommending adoption of this GPA, the City could experience a significant financial burden in the case of a natural disaster or public safety emergency.

#### **FISCAL IMPACT:**

There is no fiscal impact to the City's General Fund outside of the staff time to prepare this report.

#### **OPTIONS:**

1. Approve as recommended
2. Do not approve and provide alternative direction

#### **ENVIRONMENTAL DETERMINATION:**

##### **A. California Environmental Quality Act (CEQA)**

For the following reasons, incorporating the LHMP into the Safety Element of the Banning County General Plan is exempt from the California Environmental Quality Act (CEQA): (1) Since the proposed activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, as such, the project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(2); (2) In light of the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and since it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA pursuant to CEQA Guidelines Section 15061 (b )(3); and (3) Because the implementation of the LHMP will include actions taken by regulatory agencies to maintain and protect natural resources and the environment, the project is categorically exempt from CEQA pursuant to CEQA Guidelines sections 15307 and 15308.

##### **Multiple Species Habitat Conservation Plan (MSHCP)**

An amendment to the General Plan Safety Element does not relate to any one physical project and are not subject to the MSHCP. Further, no specific projects will be triggered as a result of incorporating the LHMP into the City's General Plan; rather the proposed General Plan Amendment is an effort to limit the City's financial liability in the unlikely event of a natural disaster, city emergency, or public safety event. Such events are not considered Projects under of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

### **ADDITIONAL REQUIRED FINDINGS**

The California Government Code and Section 17.64.070 (Findings) of the City of Banning Municipal Code require that General Plan Amendments meet certain findings prior to the approval by the City Council. The following findings are provided in support of the approval of the General Plan Amendment No. 19-2501

**Finding No. 1:** Proposed General Plan Amendment is internally consistent with the General Plan.

**Findings of Fact:** The proposed General Plan Amendment will incorporate the City's 2017 Local Hazard Mitigation Plan (LHMP) into the City's General Plan; more specifically, into the Safety Element pursuant to state law. The LHMP details hazard mitigation controls and procedures to protect the health, safety, and welfare of the City, its residents, patrons, and visitors in the event of a natural disaster or citywide emergency or threat. The LHMP achieves similar goals and objectives to those policies within the City's Safety Element.

The LHMP is consistent, and implements, the following Goals and Policies of the Environmental Hazards Element:

Goal 1: Increased protection and safety of human life, land, and property from the effects of seismic and geotechnical hazards.

- Policy 1: The City shall establish and maintain an information database containing maps and other information which describe seismic and other geotechnical hazards occurring within the City boundaries, sphere-of-influence and planning area.
  - Such maps and information has been incorporated into the LHMP, for inclusion and adoption into the General Plan.
- Policy 5: The City shall coordinate and cooperate with public and quasi-public agencies to assure the continued functionality of major utility systems in the event of a major earthquake.
  - The LHMP sets forth mutual-aid procedures between the City of Banning, Riverside County Fire, CalFire, and the Morongo Tribal Government

**Finding No. 2:** Proposed General Plan Amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.



The LHMP implements Policy 6, of the Public Facilities Chapter, which states as follows: *Critical structures and facilities (including the civic center, hospitals, fire stations, police stations, schools and major communications facilities) shall be restricted from geologically and hydrologically hazardous areas.*

**Finding No. 3:** Proposed General Plan Amendment would maintain the appropriate balance of land uses within the City.

The proposed General Plan Amendment will not impact or affect any aspect of the City's General Plan Land Use Element. Incorporating the LHMP into the Safety Element will ensure the protection of the City's public infrastructure.

**Finding No. 4:** That in the case of an amendment to the General Plan Land Use Map, the subject parcels (s) is physically suitable (including, but not limited to access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints), for the requested land use designations(s) and the anticipated land use developments.

The proposed General Plan Amendment will not impact or affect any aspect of the City's General Plan Land Use Element. Incorporating the LHMP into the Safety Element will ensure the protection of the City's public infrastructure.

#### **PUBLIC COMMUNICATION:**

This hearing was advertised in the Record Gazette newspaper on April 19, 2019.

PREPARED BY:

\_\_\_\_\_  
Adam B. Rush  
Community Development Director

#### **ATTACHMENTS:**

1. Resolution 2019-11
2. 2017 City of Banning Local Hazard Mitigation Plan (LHMP)
3. Public Hearing Notice

# **ATTACHMENT 1**

Resolution 2019-11

**RESOLUTION 2019-11**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA APPROVING GENERAL PLAN AMENDMENT 19-2501, INCORPORATING THE BANNING LOCAL HAZARD MITIGATION PLAN (LHMP) INTO THE SAFETY ELEMENT OF THE CITY'S GENERAL PLAN. GENERAL PLAN AMENDMENT EFFECTS ALL PARCELS AND ASSESSOR'S PARCEL NUMBERS (APN) IN THE CITY OF BANNING, CALIFORNIA.**

**WHEREAS**, an application for General Plan Amendment (GPA) 19-2501 incorporating the City of Banning's 2017 Local Hazard Mitigation Plan (LHMP) into the General Plan Safety Element has been duly filed by:

Project Applicant: City of Banning  
c/o Community Development Department  
99 Ramsey Street  
Banning, CA, 92220

APN's: All Parcels and All Assessor's Parcel Numbers  
(Banning, CA)

Lot Area: City-wide

**WHEREAS**, the Planning Commission has the authority to review and make recommendations to the City Council concerning General Plan Amendment 19-2501; and

**WHEREAS**, in accordance with Government Code Sections 65353, 65090, and 65091, on April 18, 2019 the City gave public notice by advertisement in the Record Gazette newspaper, of a public hearing concerning the Project, which included the GPA 19-2501 In accordance with Government Code 65853, 65090; 65901 et. al., the number of real property owners exceeds 1,000; therefore, the City published an 1/8-page display advertisement in the Record Gazette newspaper; and,

**WHEREAS**, in accordance with Government Code Section 65353, on May 1, 2019 the Planning Commission held the duly noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to GPA 19-2501 and at which time the Planning Commission considered the proposed General Plan Amendment; and

**WHEREAS**, at this public hearing on May 1, 2019, the Planning Commission heard public comments on, and adopted this Resolution recommending that the City Council approve GPA 19-2501

**NOW THEREFORE**, the Planning Commission of the City of Banning recommend to the City Council of the City of Banning as follows:

**SECTION 1: California Environmental Quality Act Findings and CEQA Guidelines Section 15060(c)(2)**. The Planning Commission of the City of Banning does hereby recommend that the City Council make the following environmental findings and determinations in connection with the approval of the project:

- A. For the following reasons, incorporating the LHMP into the Safety Element of the Banning County General Plan is exempt from the California Environmental Quality Act (CEQA): (1) Since the proposed activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, as such, the project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(2); (2) In light of the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and since it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA pursuant to CEQA Guidelines Section 15061 (b )(3); and (3) Because the implementation of the LHMP will include actions taken by regulatory agencies to maintain and protect natural resources and the environment, the project is categorically exempt from CEQA pursuant to CEQA Guidelines sections 15307 and 15308.

**SECTION 2: Findings for Recommendation of Approval of General Plan Amendment 19-2501**. The California Government Code and Section 17.64.070 (Findings) of the City of Banning Municipal Code require that General Plan Amendments meet certain findings prior to the approval by the City Council. The following findings are provided in support of the approval of the General Plan Amendment No. 19-2501.

The Planning Commission of the City of Banning does hereby recommend that the City Council of the City of Banning find and determine that General Plan Amendment 19-2501 should be approved because:

- A. **Finding: The proposed amendment is internally consistent with the General Plan.**

**Findings of Fact:**

The proposed General Plan Amendment will incorporate the City's 2017 Local Hazard Mitigation Plan (LHMP) into the City's General Plan; more specifically, into the Safety Element pursuant to state law and the Disaster Mitigation Act of 2000. The LHMP details hazard mitigation controls and procedures to protect the health, safety, and welfare of the City, its residents, patrons, and visitors in the event of a natural disaster or citywide

emergency or threat. The LHMP achieves similar goals and objectives to those policies within the City's Safety Element.

The LHMP is consistent, and implements, the following Goals and Policies of the Environmental Hazards Element:

Goal 1: Increased protection and safety of human life, land, and property from the effects of seismic and geotechnical hazards.

- Policy 1: The City shall establish and maintain an information database containing maps and other information which describe seismic and other geotechnical hazards occurring within the City boundaries, sphere-of-influence and planning area.
  - Such maps and information has been incorporated into the LHMP, for inclusion and adoption into the General Plan.
- Policy 5: The City shall coordinate and cooperate with public and quasi-public agencies to assure the continued functionality of major utility systems in the event of a major earthquake.
  - The LHMP sets forth mutual-aid agreements and procedures between the City of Banning, Riverside County Fire, Cal Fire, and the Morongo Tribal Government.

**B. Finding: That the proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.**

**Findings of Fact:**

The LHMP implements Policy 6, of the Public Facilities Chapter, which states as follows: *Critical structures and facilities (including the civic center, hospitals, fire stations, police stations, schools and major communications facilities) shall be restricted from geologically and hydrologically hazardous areas.*

**C. Finding: That the proposed amendment would maintain the appropriate balance of land uses within the City.**

**Findings of Fact:**

The proposed General Plan Amendment will not impact or affect any aspect of the City's General Plan Land Use Element. Incorporating the LHMP into

the Safety Element will ensure the protection of the City's public infrastructure.

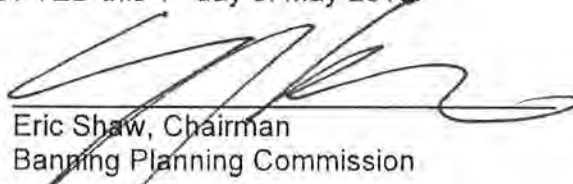
- D. Finding:** That in the case of an amendment to the General Plan Land Use Map, the subject parcels are physically suitable (including, but not limited to, access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints), for the requested land use designation and the anticipated land use developments.

**Findings of Fact:**

The proposed General Plan Amendment will not impact or affect any aspect of the City's General Plan Land Use Element. Incorporating the LHMP into the Safety Element will ensure the protection of the City's public infrastructure.


**PLANNING COMMISSION ACTION – Recommendation of Approval of General Plan Amendment.** Based on the foregoing, the Planning Commission of the City of Banning hereby recommends that the City Council of the City of Banning approve General Plan Amendment 19-2501 that affects all parcels and all Assessor's Parcel Numbers (APN) within the City of Banning.

PASSED, APPROVED AND ADOPTED this 1<sup>st</sup> day of May 2019.




Eric Shaw, Chairman  
Banning Planning Commission

APPROVED AS TO FORM  
AND LEGAL CONTENT:



Serita R. Young, Assistant City Attorney  
Richards Watson & Gershon

ATTEST:



Sandra Calderon, Recording Secretary  
City of Banning, California



**CERTIFICATION:**

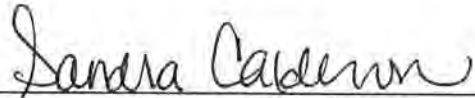
I, Sandra Calderon, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-11, was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 1<sup>st</sup> day of May, 2019, by the following vote, to wit:

AYES: Brosious, Krick, Schuler, Shaw

NOES: None

ABSENT: Price

ABSTAIN: None

A handwritten signature in cursive script, reading "Sandra Calderon", written in black ink.

Sandra Calderon, Recording Secretary  
City of Banning, California

# ATTACHMENT 2

## 2017 City of Banning Local Hazard Mitigation Plan (LHMP)

See URL:

<https://banningca.gov/DocumentCenter/View/5100/2017-LHMP-FINAL?bidId=>

2017

# LOCAL HAZARD MITIGATION PLAN



Prepared by:

Alejandro Diaz, Chief of Police

5/2/2017

## CONTACT INFORMATION

### CITY OF

Name: Alejandro Diaz  
Title: Chief of Police  
Address: 125 E. Ramsey Street  
City, State and Zip: Banning, CA 92220

Direct Contact: 951-849-1194  
Fax: 951-922-0039  
Email: [adiaz@ci.banning.ca.us](mailto:adiaz@ci.banning.ca.us)

## PLAN ADOPTION/RESOLUTION

The (Jurisdiction) will submit plans to Riverside County Emergency Management Department who will forward to California Governor's Office of Emergency Services (CAL OES) for review prior to being submitted to the Federal Emergency Management Agency (FEMA). In addition, we will wait to receive an "Approval Pending Adoption" letter from FEMA before taking the plan to our local governing bodies for adoption. Upon approval, the (Jurisdiction) will insert the signed resolution.

## EXECUTIVE SUMMARY

The purpose of this local hazard mitigation plan is to identify the County's hazards, review and assess past disaster occurrences, estimate the probability of future occurrences and set goals to mitigate potential risks to reduce or eliminate long-term risk to people and property from natural and man-made hazards.

The plan was prepared pursuant to the requirements of the Disaster Mitigation Act of 2000 to achieve eligibility and potentially secure mitigation funding through Federal Emergency Management Agency (FEMA) Flood Mitigation Assistance, Pre-Disaster Mitigation, and Hazard Mitigation Grant Programs.

Riverside County's continual efforts to maintain a disaster-mitigation strategy is on-going. Our goal is to develop and maintain an all-inclusive plan to include all jurisdictions, special districts, businesses and community organizations to promote consistency, continuity and unification.

The County's planning process followed a methodology presented by FEMA and CAL-OES which included conducting meetings with the Operational Area Planning Committee (OAPC) coordinated by Riverside County Emergency Management Department (EMD) comprised of participating Federal, State and local jurisdictions agencies, special districts, school districts, non-profit communities, universities, businesses, tribes and general public.

The plan identifies vulnerabilities, provides recommendations for prioritized mitigation actions, evaluates resources and identifies mitigation shortcomings, provides future mitigation planning and maintenance of existing plan.

The plan will be implemented upon FEMA approval.



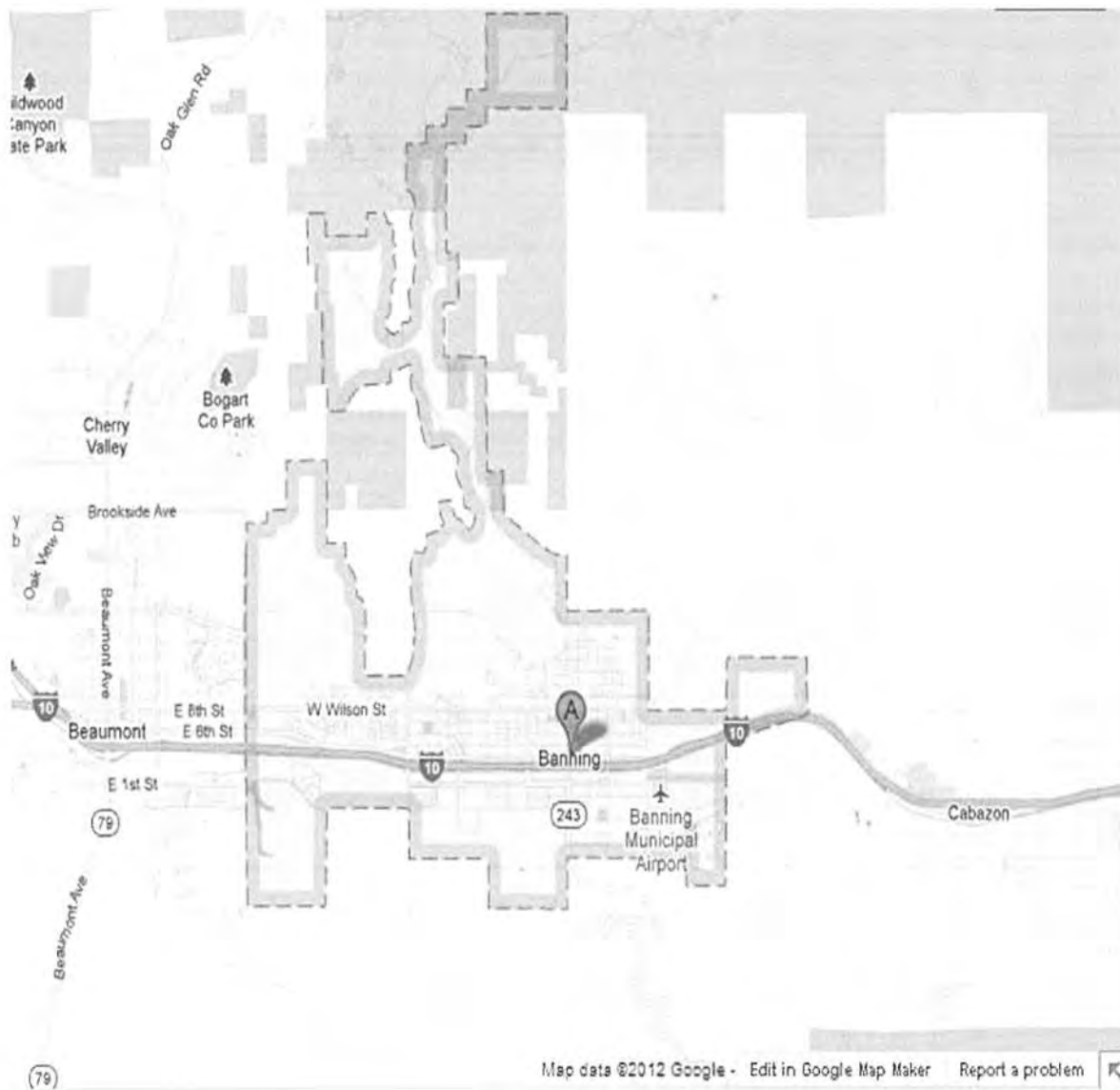
## TABLE OF CONTENT

CONTACT INFORMATION .....	1
PLAN ADOPTION/RESOLUTION .....	2
EXECUTIVE SUMMARY .....	3
TABLE OF CONTENT .....	4
SECTION 1.0 - COMMUNITY PROFILE .....	6
1.1 CITY MAP .....	6
1.2 GEOGRAPHY AND CLIMATE DESCRIPTION .....	7
1.3 BRIEF HISTORY .....	7
1.4 ECONOMY DESCRIPTION .....	7
1.5 POPULATION AND HOUSING .....	9
1.6 BRIEF STATEMENT OF UNIQUE HAZARDS .....	10
1.7 DEVELOPMENT TRENDS AND LAND USE .....	11
SECTION 2.0 - PLANNING PROCESS .....	12
2.1 LOCAL PLANNING PROCESS .....	12
2.2 PARTICIPATION IN REGIONAL (OA) PLANNING PROCESS .....	13
2.3 DATES AVAILABLE FOR PUBLIC COMMENT .....	14
2.4 PLANS ADOPTED BY RESOLUTION .....	14
SECTION 3.0 – MITIGATION ACTIONS/UPDATES .....	14
3.1 UPDATES FROM 2005 PLAN .....	14
3.2 NEW HAZARDS OR CHANGES FROM 2005 .....	14
3.3 BRIEF STATEMENT OF UNIQUE HAZARDS .....	14
3.4 MITIGATION PROJECT UPDATES .....	15
SECTION 4.0 - HAZARD IDENTIFICATION AND RISK ASSESSMENT .....	16
4.1 CRITICAL FACILITIES AND INFRASTRUCTURES .....	16
4.2 ESTIMATING POTENTIAL LOSS .....	16
4.3 TABLE REPLACEMENT VALUES .....	17
4.4 IDENTIFICATION OF RISKS AND VULNERABILITIES .....	18
SECTION 5.0 – COMMUNITY RATING SYSTEM .....	20
5.1 REPETITIVE LOSS PROPERTIES .....	20
5.2 NATIONAL FLOOD INSURANCE PROPERTIES .....	20
SECTION 6.0 - CAPABILITIES ASSESSMENT .....	22
6.1 REGULATORY MITIGATION CAPABILITIES .....	22
6.2 ADMINISTRATIVE/TECHNICAL MITIGATION CAPABILITIES .....	24
6.3 FISCAL MITIGATION CAPABILITIES .....	24
6.5 FUNDING OPPORTUNITIES .....	25
SECTION 7.0 - MITIGATION STRATEGIES .....	25
7.1 GOALS AND OBJECTIVES .....	25
7.2 MITIGATION ACTIONS .....	27
7.3 ON-GOING MITIGATION STRATEGY PROGRAMS .....	27
7.4 FUTURE MITIGATION STRATEGIES .....	28
SECTION 8.0 - PLAN IMPLEMENTATION AND MAINTENANCE PROCESS .....	28
SECTION 9.0 - INCORPORATION INTO EXISTING PLANNING MECHANISMS .....	29
SECTION 10.0 - CONTINUED PUBLIC INVOLVEMENT .....	30
APPENDIX A – PUBLIC NOTICES AND MAPS .....	31
APPENDIX B – INVENTORY WORKSHEETS .....	32
APPENDIX C – PLAN REVIEW TOOL/CROSSWALK .....	33

PAGE BLANK INTENTIONALLY

## SECTION 1.0 - COMMUNITY PROFILE

## 1.1 CITY MAP



## **1.2 GEOGRAPHY AND CLIMATE DESCRIPTION**

The City of Banning is a corporate city in Riverside County in the Coachella Valley of California. It is approximately twenty-three (23) square miles in area and is 80 miles east of the County seat, the City of Riverside. City of Banning sits directly adjacent to San Bernardino County on its northern, southern and east boundaries is Riverside County, and is adjacent to Beaumont to the west. The Union Pacific Railroad and California State Highway 10 both run through the middle of the City. Smith Creek, a waterway that starts in the Mountains and runs through the lower part of the Valley, is close to the City's southern and eastern boundaries.

The City of Banning has climate that would be described as hot during the summer and could possibly have snow during the winter months. Average temperatures are in the high 90's during summer and low 40's during the winter. However, Banning can get snow which would make the temperatures lower. The rainfall for the City of Banning on an average is about 3 inches per year. Mt. San Gorgonio and Mt. San Jacinto mountains are located in the City. The City of Banning is known for all their festivals throughout the year.

## **1.3 BRIEF HISTORY**

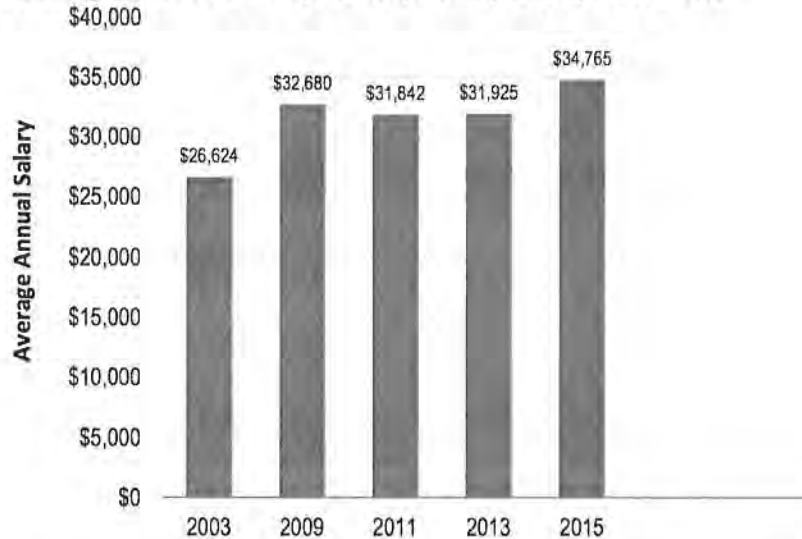
The City of Banning was established in 1913. Initially, Banning served as a stagecoach and railroad stop between the Arizona territories and Los Angeles. This history has contributed to the present day spirit of pioneer resourcefulness and "can do" attitude that is prevalent in the community. Banning is very friendly. Clean air, ample water supplies and views of both the

## **1.4 ECONOMY DESCRIPTION**

The City of Banning is primarily a bedroom community. Development in the City is 72 percent residential, 20 percent commercial, and 8 percent industrial, which limits the sales and property tax base. Agriculture is the primary industry within and around City of Banning. The City's downtown area, known as the City of Banning, has specialty shops, restaurants, and businesses.

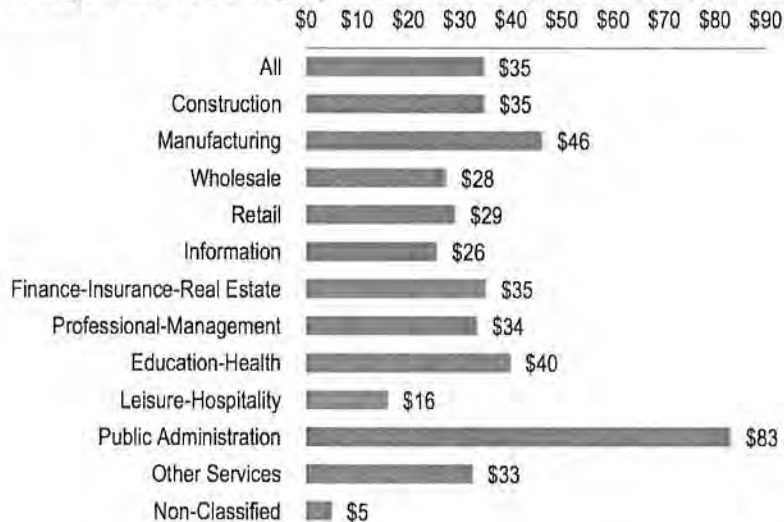
## Average Salaries

**Average Annual Salary: 2003, 2009, 2011, and 2015**



- Average salaries for jobs located in the city increased from \$26,624 in 2003 to \$34,765 in 2015, a 30.6 percent change.
- Note: Dollars are not adjusted for annual inflation.

**Average Annual Salary by Sector: 2015 (\$ thousands)**



- In 2015, the employment sector providing the highest salary per job in the city was Public Administration (\$83,320).
- The Non-Classified sector provided the lowest annual salary per job (\$5,238).

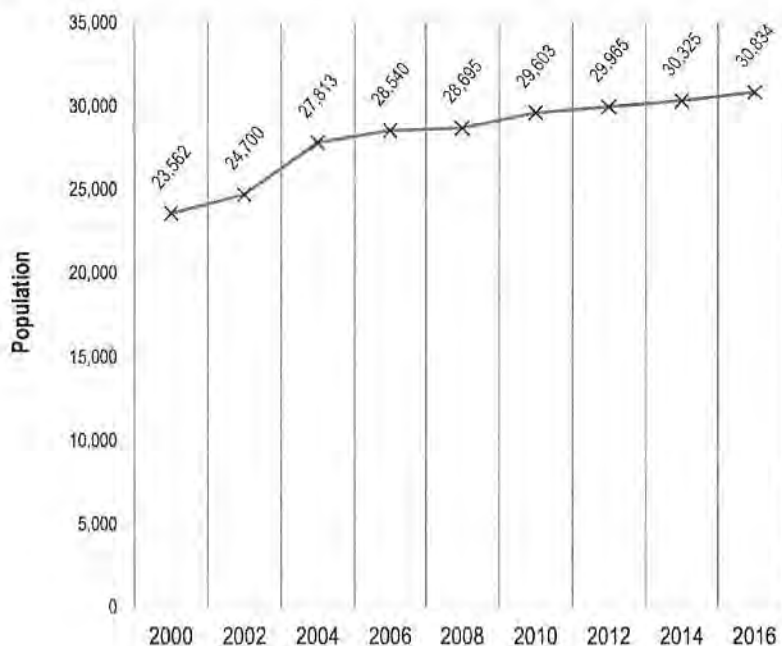
## 1.5 POPULATION AND HOUSING

The 2017 population of the City of Banning, California is estimated at 30,769, whereas 2012 population was 29,603. The City of Banning has some seasonal residents that will increase the population by 8.7% (seasonal increase of 2,575). Seasonal residents may spend fall, winter and will hinder the city's services. The City of Banning is well known for their festivals that they run all years around. These festivals will generally increase the City day's population by about 7% or by 2,072.

## II. Population

### *Population Growth*

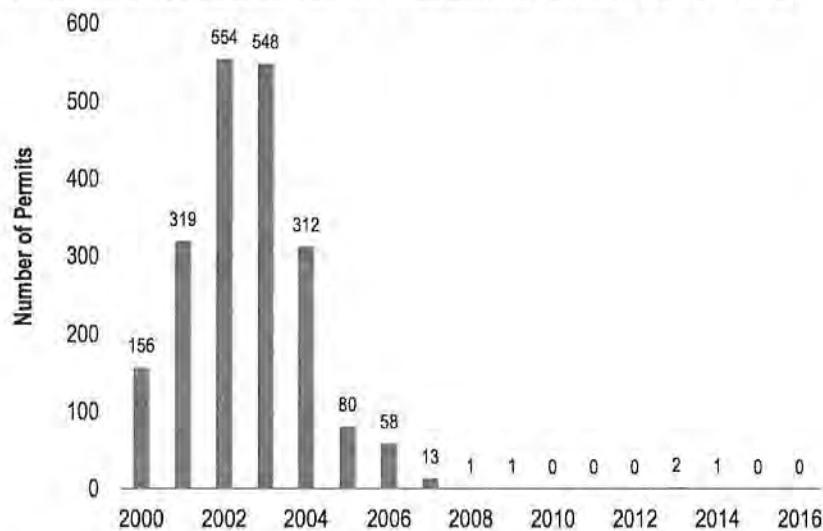
**Population: 2000 - 2016**



- Between 2000 and 2016, the total population of the City of Banning increased by 7,272 to 30,834 in 2016.
- During this 16-year period, the city's population growth rate of 30.9 percent was lower than the Riverside County rate of 51.9 percent.
- 1.3% of the total population of Riverside County is in the City of Banning.



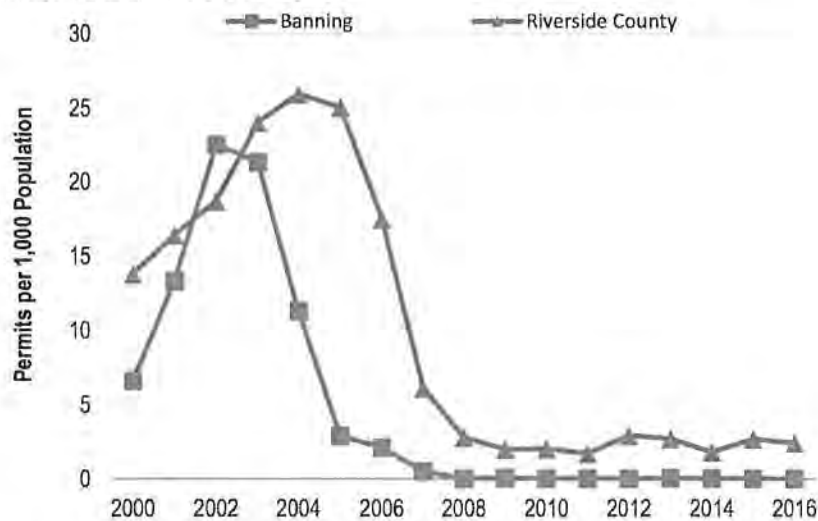
### Total Permits Issued for all Residential Units: 2000 - 2016



Source: Construction Industry Research Board, 2000 - 2016

- Between 2000 and 2016, permits were issued for 2,045 residential units.

### Permits Issued for all Residential Units per 1,000 Residents: 2000 - 2016



Source: Construction Industry Research Board, 2000 - 2016

- In 2000, the City of Banning had 6.6 permits per 1,000 residents compared to the overall county figure of 13.8 permits per 1,000 residents.
- For the city in 2016, the number of permits per 1,000 residents decreased to 0 permits. For the county overall, it decreased to 2.4 permits per 1,000 residents.

## 1.6 BRIEF STATEMENT OF UNIQUE HAZARDS

There are no new hazards to impact the City of Banning since approval of the 2005 LHMP; however, the City has experienced the following hazards:

- Flooding from rain storms causing damage in 2009 and 2010.
- Flooding on east side of town and at W. Ramset Street and Omar Street, where the water channel goes under Interstate Highway 10.
- Fires within the City boundaries (Esperanza Fire).
- Fire destroyed a historic building in the downtown area in 2014.
- Vegetation fires in the hills around Banning and in open space in 2010, 2012, and 2015.

## 1.7 DEVELOPMENT TRENDS AND LAND USE

The City of Banning has experienced a 20% growth rate since 2005.

# **COMMUNITY ECONOMIC PROFILE for BANNING RIVERSIDE COUNTY, CALIFORNIA** *Prepared in conjunction with the City of Banning and the Banning Chamber of Commerce*

Banning, incorporated February 6, 1913, is located 84 miles east of Los Angeles and 483 miles south of San Francisco.

	1980	1990	2000	2010
Population-County	663,166	1,170,413	1,341,357	2,189,641
Taxable Sales-County	\$5,274,017	\$9,522,631	\$16,979,449	\$23,217,877 <sup>1</sup>
Population-City	14,020	20,579	23,362	26,603
Taxable Sales-City	\$48,381	\$114,140	\$192,644	\$156,232 <sup>2</sup>
Housing Units-City	5,727	7,431	8,923	10,138 <sup>3</sup>
Median Household Income-City	\$11,981	\$22,514	\$32,676	\$36,579 <sup>4</sup>
School Enrollment K-12	2,744	4,468	4,522	4,710 <sup>5</sup>

1. U.S. Census Bureau, 2010. Postwar census reflects metropolitan boundaries. 2. Calculated from County of Registration, a statistic from 2000. All rights reserved. 3. U.S. Census Bureau, 2000-2010 American Community Survey. 4. California Department of Education, 2010. Enrollment count is for 2009-10.

Period	AVERAGE TEMPERATURE			RAIN	HUMIDITY		
	Min.	Mean	Max.	Inches	4 A.M.	Noon	4 P.M.
January	51.8	49.4	60.0	2.75	40	25	30
April	64.5	58.4	72.4	1.72	30	25	20
July	82.2	79.4	96.6	0.07	30	15	20
October	50.3	65.9	80.6	0.88	30	20	25
Year	48.7	63.0	77.4	18.69	32	22	23

**RAIL:** Main line of Union Pacific; local freight pick up available.

**TRUCK:** 16 carriers in Banning and 11 in Beaumont.

**OVERNIGHT DELIVERY TO:** Los Angeles, San Francisco, San Diego and Phoenix.

**AIR:** Banning Municipal Airport services private planes, corporate jets and helicopters, including emergency medical transportation. L.A. Ontario International Airport (owned and operated by Los Angeles World Airports), 47 mi. west, is served by AeroMexico, Alaska, American Airlines, Continental, Delta Airlines, Great Lakes Airlines, Southwest Airlines, United Airlines, United Express and US Airways. Palm Springs International Airport, 30 mi. east, is served by Alaska, Allegiant Air, American Airlines, Delta Connection, Horizon Air, Sun Country, United, United Express, US Airways Express and WestJet; general facilities, 10,000 ft. runway.

**BUS:** Pass Transit System fixed route and Dial-a-Ride services. Connections to Beaumont Dial-a-Ride and Riverside Transit Agency transit services. There is a Greyhound station in Banning.

**PORTS:** Nearest ports are in Los Angeles-Long Beach, 85 mi. west, and San Diego, 96 mi. south.

**HIGHWAYS:** I-10 and Calif. 60 west to Los Angeles, I-10 east to Phoenix, and Calif. 79 south at Beaumont, 5 mi. west. Connections to I-215 north-south and to Calif. 91 west at Riverside and San Bernardino, 25 mi. west.

## SECTION 2.0 - PLANNING PROCESS

### 2.1 LOCAL PLANNING PROCESS

Representatives from the City of Banning Building & Safety, Planning, Finance, Engineering, Parks and Recreation, Fire, and Public Works departments on September 4, 2014 met to review past hazards as well as identify and prioritize appropriate local hazard mitigation strategies. The City of Banning's General Plan also contains an Environmental Hazards Element that outlines hazards and mitigation steps. The City is currently updating its General Plan which includes goals, policies, and programs regarding environmental hazards, the transport of hazardous materials, emergency operation plan (EOP) and to provide an efficient and effective public safety.

#### Planning Process

In order to achieve a comprehensive hazard mitigation plan, the City utilized a planning process that included engaging various Departments within the City of Banning, neighboring local jurisdictions, special districts and input from the community. The process included the following phases:

#### 1. Hazards and Risk Identification

The planning team reviewed the past hazards and current hazards to prioritize existing funding and capital improvement projects.

They also identified risks and estimated potential loss to the critical infrastructures and property values to develop mitigation strategies and explore new funding sources.

#### 2. Community Outreach and Partnerships

The City established a list of stakeholders and encouraged them to participate in the planning process by attending the local hazard mitigation workshops that were presented at the Pass Comm and at the quarterly Operational Area Planning Committee meetings. The said meetings are attended by the neighboring cities, special districts, non-profit organizations, businesses and community which are open for public comment. Comments were compiled and taken in to consideration for planning.

#### 3. Preparedness Training

The City conducted Public Outreach programs to include emergency preparedness with other public service organizations and Community Emergency Response Team (CERT) training.

#### 4. Policy and Plan Review

In this phase, the planning team reviewed all existing Federal, State and local laws, regulations and plans to incorporate into the local hazard mitigation plan. The review included the following:

- CFR - Title 44
- City of Banning Municipal Codes
- City of Banning General Plan
- Capital Improvement Plan
- Title 8 – Health and Safety Codes
- Title 13 – Public Services

Chapters 13.12 – Water Wells

Chapters 13.24 – Storm Water Management

#### 5. Mitigation Strategies and Goals

All of the mitigation goals and strategies were developed based upon existing and identified risks and hazards. Projects were prioritized, and the City reviewed existing and possible funding sources for projects that will reduce or mitigate risks and hazards. The planning team also explored all viable alternatives if the projects exceed funding capabilities.

## 2.2 PARTICIPATION IN REGIONAL (OA) PLANNING PROCESS

The City of Banning participates in the Riverside County Operational Area (OA) workshops and meetings:

- Attended OA Disaster Council Meeting
- Attended Quarterly OA Meetings
- Attended All Riverside County – Hazard Mitigation Planning Meetings
- Conducted quarterly City emergency planning meetings and employee training.

- Conduct Public Outreach programs, to include emergency preparedness and other public service organizations.
- Attended Freeway Closure Taskforce Meetings

### **2.3 DATES AVAILABLE FOR PUBLIC COMMENT**

- 06/13/2017: PASSCOM meeting

### **2.4 PLANS ADOPTED BY RESOLUTION**

Upon approval by FEMA, the LHMP will be presented to the (Respective Board or Council) in a public meeting for adoption via an official Resolution.

## **SECTION 3.0 – MITIGATION ACTIONS/UPDATES**

### **3.1 UPDATES FROM 2012 PLAN**

No new hazards happened in our jurisdiction that are not already addressed in the previous LHMP.

### **3.2 NEW HAZARDS OR CHANGES FROM 2012**

There are no new hazards to impact the City of Banning since approval of the 2005 LHMP; however, the City has experienced the following hazards:

- Flooding from rain storms causing damage in 2009 and 2010.
- Flooding on east side of town and at W. Ramset Street and Omar Street, where the water channel goes under Interstate Highway 10.
- Fires within the City boundaries.
- Fire destroyed a historic building in the downtown area in 2012
- Vegetation fires in the hills around Banning and in open space in 2008, 2009, 2010 and 2012.

### **3.3 BRIEF STATEMENT OF UNIQUE HAZARDS**

#### **Landslide and Slope Instability**

In the City of Banning, as development reaches higher elevations within the hills, landslides and slope instability are considered a significant risk. Slope failures can occur on the steep slopes of the foothills and mountains that surround Banning during or after periods of intense rainfall or in

response to strong seismic shaking. Other areas potentially prone to landslides and slope instability include areas with steep canyon walls and the natural slopes facing the southern edge of the City, which are likely to be impacted by rockfalls, rockslides, and soil slips. Landslides could also occur in southern Banning Bench on shallow subsurface sedimentary rock that are generally massive to thickly bedded.

#### San Andreas Fault

The San Andreas Fault zone passes through the northerly portion of the Banning planning area. It is the longest fault in the state of California, extending approximately 600 miles from the Salton Sea to Cape Mendocino. The San Andreas is a right-lateral transform fault regarded as a "Master Fault" that controls the seismic hazard for central and southern California. The last major earthquake to occur on the southern San Andreas was the magnitude 8.0 Fort Tejon earthquake in 1857.

### 3.4 MITIGATION PROJECT UPDATES

The City has implemented mitigation efforts since the approval of the 2005 LHMP that include the following:

- The City's Building Department has implemented standards on building elevations in reference to curbs and gutters based on past practice.
- The City has designated cooling centers and secondary sites if needed during a heat emergency. City Recreation Department staff would assist in staffing these sites, and the City would provide for water and other basic needs. The main cooling center is located at the Banning Community Services Department, 789 N. San Geronio St., Banning, CA 92220.
- The Police Department and the California Department of Transportation have a plan to divert traffic from Highway in the event of major traffic accidents.
- The City has identified and summarized Capital Improvement Program projects and funding sources, however some of the projects are on hold due to lack of funding. Please see figures 3.2.1 through 3.2.3 for a list of projects and the cost benefit analysis.



## SECTION 4.0 - HAZARD IDENTIFICATION AND RISK ASSESSMENT

**4.1 CRITICAL FACILITIES AND INFRASTRUCTURES**

<b>Critical Facilities Type</b>	<b>Number</b>
Public Safety Dispatch	1
Emergency Operations Center	2
City Hall	1
Fire Stations	2
Water Reservoirs	1
Water Treatment Plants	1
Waste Water Treatment Plants	1
Hospitals	1
Police facility	1
Maintenance Yards	2
Senior Community Centers	1
Schools	12
Radio Repeaters	2

**4.2 ESTIMATING POTENTIAL LOSS**

The most vulnerable structures in the City are downtown fire station, City Hall, and downtown unreinforced structures. These facilities are of the weakest in the city. The close proximity to the San Andreas Fault is sure to cause damage to any of these facilities in the event of a major earth quake.

(See Part II –Page 21 Local Jurisdiction Development Trends Questionnaire)

#### 4.3 TABLE REPLACEMENT VALUES

Name of Asset	Replacement Value (\$)	Hazard Specific Info.
City Hall	12 Million	Unreinforced masonry
Fire Station-6 <sup>th</sup> Street	2.5 Million	Unsecured perimeter
Fire Station-Murray Street	2.3 Million	Unsecured Perimeter
Schools (elementary, middle)	77.1 Million	Some are unsecured
High school (Banning High)	40 Million	Open campus
Police Department	15.1 Million	Proximity to railroad system
Corporate Yard	5 Million	Proximity to railroad system

#### 4.4 IDENTIFICATION OF RISKS AND VULNERABILITIES

Wildfire, flooding, earthquakes, extreme weather (heat and wind), hazardous materials incidents, debris flows, blackouts, transportation incidents, pipeline emergencies, civil unrest, terrorism.

##### 1. Flood - Severity - 3, Probability -2, Ranking - 5

Heavy rain can lead to problems with storm drainage and create localized flood problems. According to the City of Banning Storm Drain Master Plan, there are several flooding problem areas in the City. These areas are primarily a result of undersized pipes where the runoff exceeds the pipe capacity even for minor storms, damaged curb and gutters where the flow lines have been disrupted due to raised gutters and other obstructions, or damaged drain pipes. The north side of town flows to the south side of town. The flood channels on the north side of town flow under the Interstate Hwy 10. This is where the channels become very narrow and water backs up on the north side.

The majority of the damaged lines are downtown, where the storm drain pipes are some of the oldest in the system. The undersized lines are being recognized and are being addressed when buildings are retrofitted or new buildings are being built. Currently the downtown areas along East and West Ramsey Streets and San Geronio Ave are important to update with larger drainage system. The areas that have curb and gutter flow line damage are generally in the older residential areas, including the areas south and west of Banning High School. (See Riverside County OA MJHMP Section 5.3.1 Pages 164-195).

##### 1. 3. Earthquake – Severity -4 , Probability -3 Ranking – 1

The City of Banning is located in the Southern section San Andreas Seismic Hazard Zone. The San Andreas Fault is less than 15 miles to our northeast and can produce very high levels of shaking in the entire Banning Pass Area. The City of Banning downtown section is the oldest buildings in town. None of these building are earthquake protected or retrofitted for earthquake movement. In a major earthquake event, several if not all of the downtown buildings would be left standing. Most of these building were built back into 1800's. (See Riverside County OA MJHMP Section 5.3.3 Pages 196-218).

##### 4. Severe Weather - Severity - 3, Probability - 2, Ranking - 9

Cooling Areas/ Extreme Heat:

The City has several cooling centers; the cooling areas in the City of Banning are large box retail stores, senior centers and social clubs. These heat cooling areas are located more in the downtown areas.

Extreme cold:

The extreme cold and freezing impacts our residential homes, with pipe breaks and the use of non-listed heaters. This crease a fire/life safety concerns.

Heavy rain:

Heavy rain impacts the city by flooding, flooding damages homes, businesses, and loss of life. The City has plans to correct the flooding issues throughout Banning.

(See Riverside County OA MJHMP Section 5.3.4 Pages 219-226 and Section 5.3.8 Pages 239-245).

Hazardous Materials - Severity –, Probability –, Ranking

5. Technological Hazards - Severity - 4, Probability - 3, Ranking - 3

(Transportation Hazards/Hazardous Materials Release)

Along with the potential for death and injuries from large-scale motor vehicle accidents, there is the potential for hazardous material spills or fires as numerous commercial transportation vehicles travel the highway and interstate with various types and quantities of hazardous materials.

The Union Pacific Railroad is a predominately commercial freight transportation system but, Amtrak trains also use these track. Large quantities and numerous types of hazardous materials are transported through the jurisdiction by rail on a daily basis. The rail line was closed for multiple days in the area, but the specific closures and damage are no longer known. However, due to the increased rail and vehicle traffic in and near the City, this type of accident may occur again in the future.

Of particular concern is the large number of liquefied petroleum gas vessels that are transported on the system. A derailment and fire, with large exploding liquefied petroleum gas vessels, could cause widespread damage to the City, as has happened in other communities across the country.

Large quantities of hazardous materials are used by the agricultural industry and thus travel through the City of Banning and are stored and used in the surrounding areas. In the past there was the potential for hazardous materials releases from large industrial facilities. In today's economics, the smaller businesses are stock piling hazardous materials storage. (See Riverside County OA MJHMP Section 5.4.3 Pages 277-281).

(See Appendix A- Part II –Inventory Worksheet Page 9 for complete ranking chart of City of Banning Hazards.)

5. Dam Failure – Severity - , Probability - , Ranking - N/A

(See Riverside County OA MJHMP Section 5.4.1 Pages 261-270).

2. Drought - Severity - 2, Probability -3 , Ranking – 6

Drought has affected the City of Banning for years. The problem is the longer the drought continues the less people will be watering the yards, fields, and acreages. Wildfires start because of the drought cases. This is where the extreme weed abatement starts. The City of Banning's weed abatement program is very aggressive and known nearly every land owner is aware of this. After giving the owners two notices, the City of Banning hires contractors to clean up the parcel. (See Riverside County OA MJHMP Section 5.3.5 Pages 227-230).

See Part II - Inventory Worksheet Page 18 for complete ranking chart

## SECTION 5.0 – COMMUNITY RATING SYSTEM

### 5.1 REPETITIVE LOSS PROPERTIES

There were no repetitive loss properties in the City of Banning since the approval of the 2005 Local Hazard Mitigation Plan.

### 5.2 NATIONAL FLOOD INSURANCE PROPERTIES

The City of Banning has participated in the National Flood Insurance Program since 8/28/2008. The City provides information to residents regarding flood hazards, actions they can take to be safe during a flood event, flood insurance requirements, and requires that new development and significant redevelopment comply with the City's flood ordinances and meet FEMA standards for construction.

- a. ***Describe participation in NFIP, including any changes since previously approved plan.*** No changes since participating in 2008.
- b. ***Date first joined NFIP.*** 2008.
- c. ***Identify actions related to continued compliance with NFIP.*** The City of Banning is currently in compliance with the NFIP. Banning currently conducts outreach to educate residents on the potential flood hazards in the community.
- d. ***CRS member?*** No.
- e. ***CRS class?*** N/A.
- f. ***Describe any data used to regulate flood hazard area other than FEMA maps.*** None.
- g. ***Have there been issues with community participation in the program?*** No.
- h. ***What are the general hurdles for effective implementation of the NFIP?*** None.
- i. ***Summarize actions related to continued compliance with NFIP*** None.
- ii. ***Repetitive Loss Properties*** None.

Other risks:



## SECTION 6.0 - CAPABILITIES ASSESSMENT

### 6.1 REGULATORY MITIGATION CAPABILITIES

Capabilities are the programs and policies currently in use to reduce hazard impacts or that could be used to implement hazard mitigation activities. This capabilities assessment is divided into five sections –

- Regulatory Mitigation Capabilities
- Administrative And Technical Mitigation Capabilities
- Fiscal Mitigation Capabilities
- Mitigation Outreach And Partnerships
- Funding Sources

Regulatory Tool	Yes/No	Comments
General plan	Yes	General Plan for the City (2006)
Zoning ordinance	Yes	
Subdivision ordinance	Yes	
Site plan review requirements	Yes	
Floodplain ordinance	Yes	
Other special purpose ordinance (storm water, water conservation, wildfire)	Yes	Urban Water Management/Conservation Plan
Building code	Yes	California Code in Building/Fire Codes Adopted 2010
Fire department ISO rating	Yes	Rating: 4
Erosion or sediment control program	Yes	
Storm water management program	Yes	Yes
Capital improvements plan	Yes	Five year plan
Economic development plan	Yes	
Local emergency operations plan	Yes	Updated 2011
Flood Insurance Study or other engineering study for streams	No	

### **Comprehensive General Plan for the City (2006)**

The City of Banning General Plan reflects the City's long-range aspirations (15-20 years) of physical form and amenity and provides guidance for developmental regulations, such as zoning and subdivision ordinances. Two of the plans goals, in particular, support hazard mitigation. These goals and their policies are included below.

#### **Goal 1: Seismic Hazards**

Goals for achieving and maintaining safety from seismic events, include preventing serious injury, loss of life, serious damage to critical facilities involving large assemblies of people, and loss of continuity in providing services.

The City will inventory all buildings which are unsound under conditions of "moderate" seismic activity; buildings having questionable structural resistance should be considered for either rehabilitation or demolition. Structures determined by the City's building official to be structurally unsound are to be reported to the owner and recorded with the County recorder to insure that future owners are made aware of hazardous conditions and risks. This is an on-going project.

#### **Goal 2: Public Safety Hazards**

Goals for public safety seek to reduce loss of life or property due to crime, fire, earthquake, or other disasters or hazards, provide adequate medical and emergency services to reduce the effects of natural or manmade disasters, promote citizen awareness and preparedness for emergency/disaster situations or potential for the incidence of crime, and implement adequate interagency disaster planning.

The City will continue to maintain and update emergency service plans, including plans for managing emergency operations, the handling of hazardous materials, and the rapid cleanup of hazardous materials spills.

The City's General Plan provides for a separate Safety Element identifying the City's policies relative to the mitigation of natural and manmade hazards as a means to improve the safety of its citizens. The Safety Element complies with the State of California's directive pertaining to noise and safety issues.

#### **Water Conservation Ordinance**

City of Banning Municipal Code addresses water conservation (water waste). It specifies when watering is allowed for irrigating lawns, shrubs and trees (i.e., days and times or restrictions).

## 6.2 ADMINISTRATIVE/TECHNICAL MITIGATION CAPABILITIES

Personnel Resources	Yes/No	Department/Position
Planner/engineer with knowledge of land development/land management practices	Yes	Planning and Development Director
Engineer/professional trained in construction practices related to buildings and/or infrastructure	Yes	City Engineer and Building Official
Engineer with an understanding of natural hazards	No	
Personnel skilled in GIS	Yes	Planning Department
Full time building official	Yes	Contracted
Floodplain manager	No	
Emergency manager	Yes	Police Chief
Grant writer	Yes	Contracted
GIS Data—Land use	No	
GIS Data—Links to Assessor's data	No	
Warning systems/services (Reverse 9-11, outdoor warning signals)	Yes	

## 6.3 FISCAL MITIGATION CAPABILITIES

Financial Resources	Accessible/Eligible to Use (Yes/No)	Comments
Community Development Block Grants	Yes	
Capital improvements project funding	Yes	
Authority to levy taxes for specific purposes	Yes	Voter Approved
Fees for water, sewer, gas, or electric services	Yes	Water
Impact fees for new development	Yes	Development Manager
Incur debt through general obligation bonds	Yes	Voter Approved
Incur debt through special tax bonds	Yes	Voter Approved
Incur debt through private activities	No	
Withhold spending in hazard prone areas	N/A	
Other	N/A	

#### **6.4 MITIGATION OUTREACH AND PARTNERSHIPS**

The City of Banning has an existing water responsible program and annual fire safety programs in schools and throughout the year at special community events.

The City of Banning Fire Department recently agreed to an automatic aid agreement for fire and emergency medical services with the Riverside County Fire. They also have mutual aid agreements with AMR and Riverside County fire departments.

City of Banning has been training residents in CERT and NEST Training. These are Banning's residents' that volunteer that will assist the city during large Police and fire emergencies.

#### **6.5 FUNDING OPPORTUNITIES**

FEMA

### **SECTION 7.0 - MITIGATION STRATEGIES**

#### **7.1 GOALS AND OBJECTIVES**

Goal 1: Provide effective emergency response to disasters that minimize the loss of life and property, and lessen to the greatest extent feasible, serious damage and injuries.

Objective 1.1: Provide timely notification and direction to the public of imminent and potential hazards.

Objective 1.2: Protect public health and safety by preparing for, responding to, and recovering from the effects of natural or technological disasters.

Objective 1.3: Improve community transportation corridors to allow for better evacuation routes for public and better access for emergency responders.

Goal 2: Improve the community's capability to mitigate hazards and reduce exposure to hazard related losses.

Objective 2.1: Reduce localized flooding within the City's storm drain systems by enforcement of the City of Banning's Stormwater Management and Discharge Control Code.

Objective 2.2: Minimize the impact to the City due to reoccurring drought conditions that impact ground water supply.

Objective 2.3: Minimize the impact to vulnerable populations within the community that may be affected by severe weather-related events, such as long duration heat waves and winter storms.

Goal 3: Protect the lives and property of residents, business owners, and visitors from the hazards of urban and wildland fires.

Objective: 3.1: Support brush removal and weed abatement in developed areas to minimize fire risks, and coordinate with the Riverside County Fire Department Hazard Reduction Office and neighboring cities regarding jurisdictional issues related to brush removal.

Objective: 3.2: Classify areas of varying fire-hazard severity based upon the proximity to open wildland slope, grades, accessibility, water supply, and building construction features.

Objective: 3.3: Require property owners adjacent to wildland areas to maintain a defensible space around structures that are free from dry brush and other flammable materials and to comply with the 100' Defensible Space Requirement in the Public Resources Code (PRC 4291) and Government Code (GC 51182) for fuel modification to reduce fire danger.

Objective: 3.4: Continue to conduct long-range fire safety planning, including enforcement of stringent building, fire, subdivision, and other Municipal Code standards; improved infrastructure; and mutual-aid agreements with other public agencies and the private sector.

Goal 4: Substantially reduce the known level of risk to loss of life, personal injury, public and private property damage, economic and social dislocation, and disruption of vital community services that would result from earthquake damage or other geologic disturbance.

Objective: 4.1: Require new development and re-development to be undertaken in a manner that is in compliance with current seismic and geologic hazard safety standards.

Objective 4.2: Adopt current Building and Fire Codes and amend the Building and Zoning Codes to incorporate specific standards for siting, seismic design, and review of Essential Facilities.

Goal 5: Reduce near-term drought shortages that could impact residents and the agriculture industry.

Objective 5.1: Adopt and enforce the urban water management and conservation plan to preserve water.

Objective 5.2: Maximize the use of shared resources between jurisdictions and special districts for mitigation/communication.



Objective 5.3: Minimize the impact to the City due to reoccurring drought conditions that impact both ground water supply and agricultural industry.

## 7.2 MITIGATION ACTIONS

The Banning's Team has prioritized future mitigation. These future mitigation actions will depend on:

- The hazards identified
- The City's organizations will supply the Future Mitigation Team the strategy, goal, and objective for their business.
- The availability of funding will be the largest problem.

The storm water is a large problem within the City. This water will not only create flooding but landslides of the mountains surrounding the City. If the property owners don't properly maintain the land when weed abating. If the land has been cut to low or has been disked, could create a landslide problem.

The planning team for the City of Banning identified and prioritized the following mitigation actions based on the risk assessment. Background information and information on how each action will be implemented and administered, such as ideas for implementation, responsible office, partners, potential funding, estimated cost, and schedule are included.

## 7.3 ON-GOING MITIGATION STRATEGY PROGRAMS

1. The property owners need to be weed abated correctly

Other Alternatives: No Action

Responsible Office: City Street Maintenance Department/Fire Marshal

Priority (High, Medium, Low): High

Cost Estimate: \$65,000

Potential Funding: None

Benefits (Avoided Losses): Elimination of weeds and died trees would create vacant land looking neat and fire/life safety limited. If land owners would take the responsibility of ensuring their land has been maintained the costs from the City would be a saving to the City.

*On-Going Mitigation Strategy Programs*

2. Condemn vacant and abandoned buildings

Abandoned properties throughout the city



Other Alternatives: No Action

Responsible Office: Code Enforcement, Building Official, Fire Marshal, City Council

Priority (High, Medium, Low): High

Cost Estimate: \$100,000 to get the project started

Potential Funding: None

Benefits (Avoided Losses): Elimination of structural damaged buildings that has the potential of fire/life safety issues.

On-Going Mitigation Strategy Programs

Other Alternatives: No action

On-going mitigation programs in the City of Banning

The jurisdiction has many on-going mitigation programs that help create a more disaster-resistant region. The following list highlights those programs identified as Existing Programs in the mitigation strategy spreadsheet. Others are on-going programs that are currently underfunded. It is the jurisdictions priority to find additional funding to sustain these on-going programs over time.

- Vulnerability assessments of the Cities facilities and infrastructure
- Non-structural mitigation for building contents
- Installation of micro and/or surveillance cameras at critical public assets tied to web-based software

(See Part II- Inventory Worksheet Pages 21-22, "Local Jurisdiction Proposed Mitigation Action")

## 7.4 FUTURE MITIGATION STRATEGIES

See above

## SECTION 8.0 - PLAN IMPLEMENTATION AND MAINTENANCE PROCESS

The plan maintenance process shall include scheduling of monitoring, evaluating, and updating the plan in a 5 year cycle. This will ensure the city's plan will remain updated. The city will need to create a team to monitor, evaluate and update the City's LHMP.

The City of Banning will monitor and evaluate our LHMP on an annual basis. Over the next 5 years, we will review the LHMP. We will assess, among other things, whether:

- The goals and objectives address current and expected conditions.
- The nature, magnitude, and/or type of risks have changed.
- The current resources are appropriate for implementing the plan.
- There are implementation problems, such as technical, political, legal, or coordination issues with other agencies.
- The outcomes have occurred as expected

The City of Banning and agencies and other partners participated as originally proposed. If we discover changes have occurred during the evaluation, we will update the LHMP Revision Page, and notify OES to update our Annex.

Our Community Development Manager and Fire Marshal will be in charge of the monitoring, evaluation and updating of our LHMP.

## SECTION 9.0 - INCORPORATION INTO EXISTING PLANNING MECHANISMS

The City has incorporated the Local Hazard Mitigation Plan by adoption into the Safety Element of the City's General Plan. The City has a Safety Element in its General Plan that includes a discussion of fire, earthquake, flooding, and landslide hazards. This plan was adopted as an implementation appendix to the Safety Element. In addition, the City enforces the requirements of the California Environmental Quality Act (CEQA), which, since 1988, requires mitigation for identified natural hazards. The City has used these pre-existing programs as a basis for identifying gaps that may lead to disaster vulnerabilities in order to work on ways to address these risks through mitigation.

The local hazard mitigation planning efforts is included into the following:

### CITY OF BANNING MUNICIPAL CODES

#### Title 8 HEALTH AND SAFETY

- Chapter 8.04 Abandoned Gas Stations
- Chapter 8.12 Vacant And Distressed Buildings

#### Title 13 PUBLIC SERVICES

- Chapter 13.12 Water Wells
- Chapter 13.16 Water Conservation
- Chapter 13.24 Stormwater Management System

#### Title 15 BUILDINGS AND CONSTRUCTION

- Chapter 15.24 Earthquake Resistance Standards
- Chapter 15.28 Fire Districts
- Chapter 15.64 Floodplain Management

#### OTHER PLANNING MECHANISMS

- Strategic Plan for City of Banning
- Economic Development Plans
- Community Redevelopment Plan
- General Plan – Safety Element
- Emergency Operations Plan
- Wastewater Improvement Plan

#### SECTION 10.0 - CONTINUED PUBLIC INVOLVEMENT

After we go through the Scheduled Plan Maintenance Process of reviewing the LHMP annually, we will notify the public of any additions or changes in the LHMP Plan. This will be accomplished through scheduled Public Safety meetings and community outreach meetings which are anticipated to be scheduled for each quarter next year.

## APPENDIX A – PUBLIC NOTICES AND MAPS

**SEE ATTACHMENTS**

## APPENDIX B – INVENTORY WORKSHEETS

**SEE ATTACHMENTS**

## APPENDIX C – PLAN REVIEW TOOL/CROSSWALK

**SEE ATTACHMENTS**



# **ATTACHMENT 3**

## **Public Hearing Notice**

**NOTICE OF PUBLIC HEARING TO CONSIDER GENERAL PLAN AMENDMENT 19-2501 INCORPORATING THE LOCAL HAZARD MITIGATION PLAN (LHMP) INTO THE CITY OF BANNING GENERAL PLAN – SAFETY ELEMENT. ALL PARCELS IN THE CITY OF BANNING, CALIFORNIA**

**NOTICE IS HEREBY GIVEN** of a public hearing before the City of Banning Planning Commission, to be held on Wednesday, May 1, 2019, at 6:30 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider the proposed General Plan Amendment. The proposed General Plan Amendment (GPA) affects all parcels within the City of Banning, California.

Information regarding the General Plan Amendment and the Local Hazard Mitigation Plan (LHMP) can be obtained by contacting the City's Community Development Department, Planning Division at (951) 922-3125, or by visiting the City Hall located at 99 East Ramsey Street, Banning. You may also go to the City of Banning website at <http://www.banningca.gov/>.

All parties interested in speaking either in support of or in opposition to this item are invited to attend the hearing, or to send their written comments to the Community Development Department, Planning Division, City of Banning at 99 E. Ramsey Street, P.O. Box 998, Banning, California, 92220.

If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the Planning Commission makes its recommendation on the proposal; or, you or someone else raised at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009).

BY ORDER OF THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA

Adam B. Rush, M.A., AICP  
Community Development Director

Dated: 04/16/2019  
Publish: 04/19/2019

Record Gazette  
218 N. Murray St.  
**Proof of Publication**  
(2015.5 C.C.P.)

164349 GPA 19-2501 CL DISP

State of California )  
County of Riverside ) ss.

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer and publisher of Record Gazette, a newspaper published in the English language in the City of Banning, County of Riverside, and adjudicated a newspaper of general circulation as defined by the laws of the state of California by the Superior Court of the County of Riverside, under the date October 14, 1966, Case No. 54737. That the notice, of which the annexed is a copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

April 19, 2019

Executed on: 04/19/2019

At Banning, CA

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

*Ana Rivera*

Signature

**NOTICE OF PUBLIC HEARING TO CONSIDER GENERAL PLAN AMENDMENT 19-2501 INCORPORATING THE LOCAL HAZARD MITIGATION PLAN (LHMP) INTO THE CITY OF BANNING GENERAL PLAN – SAFETY ELEMENT. ALL PARCELS IN THE CITY OF BANNING, CALIFORNIA**

**NOTICE IS HEREBY GIVEN** of a public hearing before the City of Banning Planning Commission, to be held on Wednesday, May 1, 2019, at 6:30 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider the proposed General Plan Amendment. The proposed General Plan Amendment (GPA) effects all parcels within the City of Banning, California.

Information regarding the General Plan Amendment and the Local Hazard Mitigation Plan (LHMP) can be obtained by contacting the City's Community Development Department, Planning Division at (951) 922-3125, or by visiting the City Hall located at 99 East Ramsey Street, Banning. You may also go to the City of Banning website at <http://www.banningca.gov/>.

All parties interested in speaking either in support of or in opposition to this item are invited to attend the hearing, or to send their written comments to the Community Development Department, Planning Division, City of Banning at 99 E. Ramsey Street, P.O. Box 998, Banning, California, 92220.

If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the Planning Commission makes its recommendation on the proposal; or, you or someone else raised at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009).

**BY ORDER OF THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA**

Adam B. Rush, M.A., AICP  
Community Development Director

Dated: 04/16/2019  
Publish: 04/19/2019

## **ATTACHMENT 2**

Planning Commission Minutes (May 1, 2019)

**City of Banning**  
**PLANNING COMMISSION MINUTES**

**May 1, 2019**

A regular meeting of the City of Banning Planning Commission was held on Wednesday, May 1, 2019 at 6:30 p.m., in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, CA, 92220.

**Commissioners Present:** Chairman Shaw  
 Commissioner Brosious  
 Commissioner Krick  
 Commissioner Schuler

**Commissioner Absent:** Commissioner Price

**Staff Present:** Community Development Director Adam Rush  
 Assistant City Attorney Serita R. Young  
 Contract Planner Mark de Manincor  
 Recording Secretary Sandra Calderon

**I. CALL TO ORDER:**

The meeting was called to order at 6:30 p.m. by Chairman Shaw.

**II. PUBLIC COMMENTS:**

No public comments.

**III. CONSENT CALENDAR ITEMS:**

APPROVAL OF MINUTES: Regular Planning Commission Meeting – April 3, 2019.

**ACTION: Motion/Second (KRICK/SCHULER)**  
**(Motion Carried 4-0)**  
**with Corrections**

Amended minutes will include comments regarding the evacuation plan for the project that was approved at the April 3rd Planning Commission Meeting for the construction of a 96-unit apartment complex which is located in the high fire zone. Cal Fire agreed that this development will be required to have one in place and be listed part of the conditions of approval.

**IV. PUBLIC HEARING:**

**1. GENERAL PLAN AMENDMENT 19-2501 INCORPORATING THE LOCAL HAZARD MITIGATION PLAN (LHMP) INTO THE CITY OF BANNING GENERAL PLAN SAFETY ELEMENT. ALL PARCELS IN THE CITY OF BANNING.**

Community Development Director, Rush presented the staff report. The item is a City initiated General Plan Amendment to incorporate the local hazard mitigation plan (LHMP) into the City's Safety Element, which covers hazards, hazardous materials, faulting, flooding, emergency services, emergency operations. The Council adopted the current LHMP in 2004 and was updated since then. The plan was approved by FEMA. Assembly Bill (AB) No. 2140 requires the safety element to incorporate the LHMP in order to receive the full level of funding.

Director Rush said the current safety element of the General Plan includes the fire hazard maps and the safety zone as they were in 2006.

Commissioner Schuler said there was a freight train derailment in the City of Devore and an evacuation was done as a result. She asked if this type of hazard going to be included in the safety element.

Director Rush said the current element includes hazardous material spills. In a situation alike, the City would respond first, and then rely on County and State Officials.

Commissioner Brosious said the City should consider training all staff for emergencies so that everyone knows what role they play, or what to do.

Director Rush he will be looking into future emergency staff training.

**ACTION: Motion/Second (KRICK/SCHULER)**

Adopt Planning Commission Resolution 2019-11, recommending to the City Council approving General Plan Amendment to the Safety Element of the City of Banning General Plan to incorporate the 2017 Local Hazard Mitigation Plan (LHMP).

**(Motion Carried 4-0)  
Price Absent**

**2. NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING REPORT AND PROGRAM (ENVIRONMENTAL ASSESSMENT), TENTATIVE TRACT MAP (TTM) 36710 AND VARIANCE 19-3001 FOR A PROPOSAL TO SUBDIVIDE FOUR LOTS TOTALING 10.6 ACRES INTO 39 SINGLE-FAMILY RESIDENTIAL LOTS AND THREE LETTERED LOTS IN THE LOW DENSITY RESIDENTIAL ZONING DISTRICT, ASSESSOR'S PARCEL NUMBER'S 534-183-014, 534-200-004, 534-200-008 AND 534-200-047**



Contract Planner Mark de Manincor presented the staff report. The item is to consider a mitigated negative declaration and mitigation monitoring program for a proposed tentative tract map to subdivide 10.6 acres into 39 single-family residential lots in the low density residential zone and a variance to allow for a reduced lot size and lot width of lot 7 as the lot is restricted in size by existing development to the east and west. The project was originally submitted in September 2015 as a Planned Unit Development (PUD) a Design Review (DR) and a Tentative Tract Map (TTM). It was approved by the Planning Commission and went City Council where it was tabled. The applicant redesigned the project and resubmitted the TTM. This new submittal is a land division and a variance only. The lots meet the Low Density Residential district standards of 7,000-foot minimum.

Suggested modifications to the Conditions of approval #6, #37, #38 and a new condition the applicant shall cause a recyclables plot plan to be submitted and approved by the Public Work's Department.

Commissioner Schuler asked if the surrounding streets have the purple pipe installed.

Director Rush said he could not see any current piping in the Nobel system under reclaimed water, but could bring that question to the City's Engineer.

Beau Cooper, Entitlement Project Manager with United Engineering Group, said the conditions of approval were reviewed and have no objections to them. He said that if there were a plan for recyclable water in this area they would agree with putting their infrastructure for future connection.

He said once a landscape maintenance district (LMD) is formed, the letter lots A, B, & C will be dedicated to the City of Banning for maintenance of those districts.

A separate meter will be issued for the landscaping district.

The easements for the electric poles will be the property owner's responsibility to maintain. In working with Edison, they agreed to a 30-foot wide easement for that power line is sufficient.

Mr. Cooper feels that the easement would work better to have the easement off set to one side only, but Edison will not condition or move that easement until grading, street plans are submitted for review.

Commissioner Krick said he sees a maintenance nightmare and asked if the maintenance of the easements could be included as part of the maintenance district.

Mr. Cooper said they would be open for that option, but landscape and lighting maintenance districts are usually preserved for public rights-of-way and City owned property.

Chairman Shaw opened public comments.

Frank Burgess, resident of Banning, recommended that he easement should be part of the landscaping program and asked for clarification regarding a retention center for this project.

Chairman Shaw said it is based on hydraulic analysis. He said projects in the City of Beaumont have underground storage underneath their landscape areas.

Commissioner Krick asked if the 30-foot easement could go to the easterly lots, allowing those lots to have 15 feet more in property to the rear of their property and taking 15-feet away from the westerly lots.

Director Rush said he would recommend that Lots 8-13 and Lots 14-19 be modified to accommodate to a maximum 30-foot easement to the easterly lots. An amendment to the final map could be done to revise tentative map before the final conditions of approval are issued before the design review comes forward.

Mr. Cooper said he would like to coordinate with Edison first and bring it back at the Design Review stage.

**ACTION: Motion/Second (KRICK/BROSIOUS)**

1. That the Planning Commission adopt Resolution 2019-08, recommending to the City Council approval of the following actions:
2. Adoption of a Mitigated Negative Declaration (MND) and Mitigation Monitoring Report and Program for the project (Environmental Assessment)
3. Approval of Tentative Tract Map 36710 for the subdivision of 10.6 acres into 39 single-family residential lots within the Low Density Residential District.
4. Approval of Variance 19-3001, subject to the findings referenced herein.

With the following amendments:

6. A six-foot tall decorative block wall shall be constructed around the perimeter of the subdivision, between houses and along all street facing side yards. View fencing, such as wrought iron, shall be constructed along detention basin areas. The applicant shall apply an anti-graffiti coating to all perimeter block walls [added at the Planning Commission meeting of 5/1/19].

37. The City and Developer are to enter into a Subdivision Agreement to guarantee the construction of the public improvements as listed in the Conditions of Approval and as shown on the approved plans. The applicant shall work with the City Attorney's Office to execute the Subdivision Agreement and pay all related legal processing fees. The applicant shall initiate the formation of a Lighting, Landscaping, and Maintenance District (LL&MD) to provide maintenance for the perimeter Right-of-Way landscaping and the water quality basins identified as Lots "A", "B", & "C" [added at the Planning Commission meeting of 5/1/19].

38. All street improvement designs shall provide pavement and lane transitions per City of Banning and Caltrans standards for transition to existing street sections. Street improvements shall include signing and striping for a four way stop at the intersection of Wilson and Florida [added at the Planning Commission meeting of 5/1/19].

97. The applicant shall cause a recyclables Plot Plan to be submitted and approved by the Department of Public Works [added at the Planning Commission meeting of 5/1/19].

**(Motion Carried 4-0)  
Price Absent**

**3. CONDITIONAL USE PERMIT 19-8001 TO ALLOW FOR THE OPERATION OF A RETAIL AUTO PARTS STORE LOCATED ON THE NORTHWEST CORNER OF NORTH 3<sup>RD</sup> STREET AND WEST RAMSEY STREET AT 321 WEST RAMSEY STREET IN THE DOWNTOWN COMMERCIAL (DC) ZONING DISTRICT.**

Contract Planner Mark de Manincor presented the staff report, he said the proposed project is for a Conditional Use Permit (CUP) a request to operate at 6,720 square foot retail facility to sell auto parts and related products. The proposed project is located in an existing building. A recent zoning text amendment approved by City Council Ordinance 1530 made the retail sales of auto parts a conditional permitted use within the Downtown Commercial Zoning District. Modifications to condition number 8 were presented to the Commission.

Director Rush said he spoke to the applicant agrees with the added conditions.

Tom Ogaz, General Manager for Parts Authority said the new effort to expand the existing business within the City of Banning would be an improvement and a better street image.

Commissioner Krick asked about condition number 5 that calls for a video surveillance camera system to be installed with a 90-day storage capacity. He asked if there are some existing cameras on the building.

Mr. Ogaz said the existing cameras were installed from the original owner, but will be installing their own system. They will be installed in all access points as well as sensitive areas.

Chairman Shaw opened public comments

Todd Chiriano, Owner/Real Estate Agent of American Federal Properties in Diamond Bar said he opposes the granting of the CUP and had also spoke against the Zone Text Amendment presented at the City Council meeting on September 10, 2018. He represents his client who purchased the building across the street from the proposed project. He said the owner purchased that building as an investment. City ordinance did not allow additional auto parts in the Downtown zone at that time. The City processed a Zone Text Amendment to allow for an auto parts store within the Downtown zone. The current tenant will now be moving across the street and leaving the owner in a very difficult position financially.

Frank Burgess, resident of Banning, said he supports the Auto Parts business move across the street and asked the Commission to approve the project.

David Ellis resident of Banning said the City has many vacant properties and should not prevent them from wanting to grow within the City.

Mr. Ed Omari owner of 263 W. Ramsey Street said he is amazed the current tenants are moving across the street. After checking with the City in 2017 and assured that another auto parts store would not be allowed to be established in the Downtown (DC) zone.

He said that if the zoning could be changed easily the investment to purchase the building would have not occurred.

Chairman Shaw closed public comments

**ACTION: Motion (KRICK/SCHULER)**

1. That the Planning Commission adopt Resolution 2019-09, and
2. Adopt a Notice of Exemption and finding that the project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) and,
3. Approval of Conditional Use Permit 19-8001 to allow the operation of an Auto Parts Store in the Downtown Commercial (DC) Zoning District.

With the following amendments:

8. The following requirements will be required at the time of plan check submittal and/or prior to building occupancy, whichever occurs first:

(a) The Site shall be developed in compliance with all current model codes. All plans shall be designed in compliance with the latest editions of the California Building Codes as adopted by the City of Banning.

(b) Commercial buildings on the site shall be accessible per California Building Code

(c) Site Facilities such as parking (open and covered), recreation facilities, and trash dumpsters, shall be accessible per California Building Code (CBC) 11A, 11B and 31B.

(d) Separate submittals and permits are required for all accessory structures such as but not limited to, trash enclosures, patios, block walls and storage buildings.

(e) Pursuant to California Business and Professions Code Section 6737, this project is required to be designed by a California licensed architect or engineer. Based on change of use and potential exiting and fire life safety improvements.

(f) The applicant shall apply an anti-graffiti coating to all perimeter block walls. [added at the Planning Commission meeting of May 1, 2019].

(g) The applicant shall cause final landscaping plans ("working drawings") that comply with the City Municipal Code relative to the City's Water Efficiency and Landscape Requirements (e.g. Article III - Landscape Design Guidelines). [added at the Planning Commission meeting of May 1, 2019]

(h) The applicant shall cause a recyclables Plot Plan to be submitted and approved by the Department of Public Works. [added at the Planning Commission meeting of May 1, 2019]

(i) Signs facing the parking area shall be placed on the exterior of the building stating, "No repairs or maintenance shall be performed in the parking area." [added at the Planning Commission meeting of May 1, 2019]

**(Motion Carried 4-0)  
Price Absent**

**4. DESIGN REVIEW 19-7001 TO ALLOW FOR THE CONSTRUCTION OF A RETAIL AUTO PARTS STORE LOCATED ON THE NORTH SIDE OF RAMSEY STREET AND EAST OF MORONGO AVENUE AT 2929 WEST RAMSEY STREET IN THE HIGHWAY SERVING COMMERCIAL (HSC) ZONING DISTRICT.**

Director Rush presented the staff report. A new facility is located within the Highway Serving Commercial (HSC) zone. A Phase One Environmental Assessment (ESA) was prepared; the property was formally agricultural property. Studies came back without any issues on that site. The architectural landscaping and design guidelines requirements were reviewed as set forth-commercial zoning district. A new condition to the Public Works Department was added and the applicant has agreed to it.

Commissioner Krick asked if there would be signage in the parking lot that prohibits mechanical work, on personal automobiles, allowed on the property.

Director Rush said he believes that is a State requirement.

Justin Petersburg, AIA, NCARB said the new condition and condition for signage regarding no work done in the parking lot is acceptable. Hopes to submit for permits within the next few weeks after approval and break ground a few months after. It will be in addition to the current store in the City of Beaumont. With the addition of this store, it will create about twelve to fifteen jobs.

Chairman Shaw opened public comments

Frank Burgess, resident of Banning, said he supports the proposed project and asked the Commissioners to approve and pass it.

Arthur Azusa, owner of 321W. Ramsey Street building said the City did well in passing the Ordinance that would allow this additional Auto Parts Store to come into Banning.



Robert Ybarra, Resident of Banning said he is in favor of the proposed project that will bring new jobs to the City. He encouraged the Commission to approve the project.

Chairman Shaw closed public comments

**ACTION: Motion (KRICK/SCHULER)**

1. That the Planning Commission adopt Resolution 2019-10, and
2. Adopt a Notice of Exemption and findings that the project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15332 (In-Fill Development Projects) and,
3. Approval of Design Review 19-7001 to allow the construction of a retail store for auto parts sales in the Highway Serving Commercial (HSC)

With the following amendments:

102. The applicant shall cause a recyclables Plot Plan to be submitted and approved by the Department of Public Works. [added at the Planning Commission meeting of May 1, 2019]

103. Signs facing the parking area shall be placed on the exterior of the building stating, "No repairs or maintenance shall be performed in the parking area." [added at the Planning Commission meeting of May 1, 2019]

**(Motion Carried 4-0)  
Price Absent**

5. **ZONING TEXT AMENDMENT 19-97502 AMENDING CHAPTER 17.12 "COMMERCIAL AND INDUSTRIAL DISTRICTS" AND 17.36 "SIGN REGULATIONS" OF TITLE 17 "ZONING" OF THE BANNING MUNICIPAL CODE TO AUTHORIZE DIGITAL ADVERTISING DISPLAYS IN THE DOWNTOWN COMMERCIAL DISTRICT, SUBJECT TO A CONDITIONAL USE PERMIT**

Director Rush presented the staff report. The Zone Text Amendment (ZTA) is to allow electronic message centers within the Downtown Commercial (DC) zone. If passed by the Planning Commission, and adopted by the City Council, subject to a Conditional Use Permit (CUP) and a Development Agreement (DA) or Lease Agreement (LA) because of City some owned property within the Downtown Commercial Zoning District. The sign limitation height is 30-feet and maximum square footage of the sign at 200-square feet. During the April 9th Planning Commission meeting, there was discussion of potential operators and locations of the proposed signs within the district. Potential electronic signs cannot be 1000 feet of another electronic sign.

There has been some talk at the staff level of potentially putting a sign on a City owned property, which is across the street from City Hall. The entire frontage of the downtown district is within the landscape area of the freeway.

Commissioner Krick asked why we need this.



Director Rush said this was on the list of projects that needed to be processed from the direction of the City Manager.

Commissioner Krick asked if a business owner in town proposed this as good idea for the City.

Director Rush said he spoke with members of the Chamber and discussion was made as a potential economic driver for the City because we have significant freeway frontage and a sense of pass through traffic going to or from the desert area.

Commissioner Krick said there are currently at least twelve signs on both of the freeway that can accommodate the needs of the businesses in town.

Chairman Shaw opened public comments

Frank Burgess said he would recommend this item be discussed with the Downtown Ad Hoc Committee and table the item.

David Ellis resident of Banning asked if anybody checked if Commissioner Kirck owns property within the Downtown zone area that is being discussed tonight. He agrees that billboards are sometimes unsightly we are in desperate need of getting businesses into town.

Director Rush said Senate Bill No. 169 was approved by the Governor on August 2013 and amended 263.3 of the Streets and Highways Code.

**ACTION: Motion (KRICK/BROSIOUS)**

Request staff to prepare a resolution making a recommendation that the City Council deny the proposed Zoning Text Amendment.

**(Motion Carried 4-0)  
Price Absent**

**PLANNING COMMISSIONER COMMENTS:**

No Comments

**VI. COMMUNITY DEVELOPMENT DIRECTOR'S COMMENTS:**

Director Rush said he would be attending the SCAG conference through the end of this week.

Some of the upcoming items will be Zoning Text Amendments regarding shipping containers. The City Manager is putting together a homeless conference. There are some interesting things other Cities are doing with shipping containers, such as temporary housing and commercial use.

Another item coming possibly in June or July is the street vendor ordinance that will go directly to City Council.

A community meeting will be held May 13th with the Sun Lakes Community to discuss the Sun Lakes Boulevard extension. An RFP for the Sun Lakes Boulevard extension realignment will go out to the environmental consultants this week.

**VII. ADJOURNMENT:**

There being no further business, the meeting adjourned at 8:51 p.m. to the next Regular Planning Commission of June 5<sup>th</sup> at 6:30 p.m. at the City of Banning Council Chambers.

Respectfully submitted,

---

Sandra Calderon  
Recording Secretary

**THE ACTION MINUTES SUMMARIZE ACTIONS TAKEN BY THE PLANNING COMMISSION. A COPY OF THE MEETING IN ITS ENTIRETY IS AVAILABLE IN DVD FORMAT AND CAN BE REQUESTED IN WRITING FROM THE CITY CLERK'S OFFICE.**

**ATTACHMENT 3**

City Council Resolution No. 2019-\_\_

## RESOLUTION 2019-\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING GENERAL PLAN AMENDMENT 19-2501, INCORPORATING THE BANNING LOCAL HAZARD MITIGATION PLAN (LHMP) INTO THE SAFETY ELEMENT OF THE CITY'S GENERAL PLAN. GENERAL PLAN AMENDMENT EFFECTS ALL PARCELS AND ASSESSOR'S PARCEL NUMBERS (APN) IN THE CITY OF BANNING, CALIFORNIA.**

**WHEREAS**, an application for General Plan Amendment (GPA) 19-2501 incorporating the City of Banning's 2017 Local Hazard Mitigation Plan (LHMP) into the General Plan Safety Element has been duly filed by:

Project Applicant: City of Banning  
c/o Community Development Department  
99 Ramsey Street  
Banning, CA, 92220

APN's: All Parcels and All Assessor's Parcel Numbers  
(Banning, CA)

Lot Area: Citywide

**WHEREAS**, the City Council has the authority to review and make recommendations to the City Council concerning General Plan Amendment 19-2501; and

**WHEREAS**, in accordance with Government Code Sections 65353, 65090, and 65091, on May 17, 2019 the City gave public notice by advertisement in the Record Gazette newspaper, of a public hearing concerning the Project, which included the GPA 19-2501 In accordance with Government Code 65853, 65090; 65901 et. al., the number of real property owners exceeds 1,000; therefore, the City published an 1/8-page display advertisement in the Record Gazette newspaper; and,

**WHEREAS**, in accordance with Government Code Section 65353, on May 28, 2019 the City Council held the duly noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to GPA 19-2501 and at which time the Planning Commission considered the proposed General Plan Amendment; and

**WHEREAS**, at this public hearing on May 28, 2019, the Planning Commission heard public comments on, and adopted this Resolution recommending that the City Council approve GPA 19-2501

**NOW THEREFORE**, the Planning Commission of the City of Banning recommend to the City Council of the City of Banning as follows:

SECTION 1: California Environmental Quality Act Findings and CEQA Guidelines Section 15060(c) (2). The City Council of the City of Banning does hereby make the following environmental findings and determinations in connection with the approval of the project:

- A. For the following reasons, incorporating the LHMP into the Safety Element of the Banning County General Plan is exempt from the California Environmental Quality Act (CEQA): (1) Since the proposed activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, as such, the project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(2); (2) In light of the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and since it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA pursuant to CEQA Guidelines Section 15061 (b )(3); and (3) Because the implementation of the LHMP will include actions taken by regulatory agencies to maintain and protect natural resources and the environment, the project is categorically exempt from CEQA pursuant to CEQA Guidelines sections 15307 and 15308.

SECTION 2: Findings for Recommendation of Approval of General Plan Amendment 19-2501. The California Government Code and Section 17.64.070 (Findings) of the City of Banning Municipal Code require that General Plan Amendments meet certain findings prior to the approval by the City Council. The following findings are provided in support of the approval of the General Plan Amendment No. 19-2501.

The City Council of the City of Banning does find and determine that General Plan Amendment 19-2501 should be approved because:

- A. Finding: The proposed amendment is internally consistent with the General Plan.**

**Findings of Fact:**

The proposed General Plan Amendment will incorporate the City's 2017 Local Hazard Mitigation Plan (LHMP) into the City's General Plan; more specifically, into the Safety Element pursuant to state law and the Disaster Mitigation Act of 2000. The LHMP details hazard mitigation controls and procedures to protect the health, safety, and welfare of the City, its residents, patrons, and visitors in the event of a natural disaster or citywide

emergency or threat. The LHMP achieves similar goals and objectives to those policies within the City's Safety Element.

The LHMP is consistent, and implements, the following Goals and Policies of the Environmental Hazards Element:

Goal 1: Increased protection and safety of human life, land, and property from the effects of seismic and geotechnical hazards.

- Policy 1: The City shall establish and maintain an information database containing maps and other information which describe seismic and other geotechnical hazards occurring within the City boundaries, sphere-of-influence and planning area.
  - Such maps and information has been incorporated into the LHMP, for inclusion and adoption into the General Plan.
- Policy 5: The City shall coordinate and cooperate with public and quasi-public agencies to assure the continued functionality of major utility systems in the event of a major earthquake.
  - The LHMP sets forth mutual-aid agreements and procedures between the City of Banning, Riverside County Fire, Cal Fire, and the Morongo Tribal Government.

- B. Finding: That the proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

Findings of Fact:

The LHMP implements Policy 6, of the Public Facilities Chapter, which states as follows: *Critical structures and facilities (including the civic center, hospitals, fire stations, police stations, schools*



*and major communications facilities) shall be restricted from geologically and hydrologically hazardous areas.*

- C. Finding: That the proposed amendment would maintain the appropriate balance of land uses within the City.

Findings of Fact:

The proposed General Plan Amendment will not impact or affect any aspect of the City's General Plan Land Use Element. Incorporating the LHMP into the Safety Element will ensure the protection of the City's public infrastructure.

- D. Finding: That in the case of an amendment to the General Plan Land Use Map, the subject parcels are physically suitable (including, but not limited to, access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints), for the requested land use designation and the anticipated land use developments.

Findings of Fact:

The proposed General Plan Amendment will not impact or affect any aspect of the City's General Plan Land Use Element. Incorporating the LHMP into the Safety Element will ensure the protection of the City's public infrastructure.

**PLANNING COMMISSION ACTION** – Recommendation of Approval of General Plan Amendment. Based on the foregoing, the Planning Commission of the City of Banning hereby recommends that the City Council of the City of Banning approve General Plan Amendment 19-2501 that affects all parcels and all Assessor's Parcel Numbers (APN) within the City of Banning.

**PASSED, APPROVED AND ADOPTED this 11<sup>th</sup> day of June, 2019.**

\_\_\_\_\_  
Arthur L. Welch, Mayor  
City of Banning

**ATTEST:**

\_\_\_\_\_  
Daryl Betancur, Deputy City Clerk  
City of Banning

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

\_\_\_\_\_  
Kevin G. Ennis, City Attorney  
Richards, Watson & Gershon

**CERTIFICATION:**

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-\_\_\_\_\_, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 11<sup>th</sup> day of June, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Daryl Betancur, Deputy City Clerk  
City of Banning, California

## **Exhibit A**

General Plan Amendment Text

## EXHIBIT A



# CITY OF BANNING

## GENERAL PLAN

Prepared By

Community Development Department  
City of Banning  
99 East Ramsey Street  
Banning CA, 92220

and



Terra Nova Planning & Research, Inc.<sup>®</sup>  
400 South Farrell Dr., Suite B-205  
Palm Springs, CA 92262

Adopted January 31, 2006

---

# CITY OF BANNING

## GENERAL PLAN

### TABLE OF CONTENTS

	Page
<b>LIST OF TABLES</b>	ii
<b>LIST OF EXHIBITS</b>	iv
 <b>I. BANNING VISION STATEMENT</b>	 I-1
 <b>II. INTRODUCTION AND ADMINISTRATION</b>	 II-1
 <b>III. COMMUNITY DEVELOPMENT</b>	
A. Land Use Element	III-1
B. Economic Development Element	III-25
C. Circulation Element	III-46
D. Parks and Recreation Element	III-82
E. Housing Element	III-102
 <b>IV. ENVIRONMENTAL RESOURCES</b>	
A. Water Resources Element	IV-1
B. Open Space and Conservation Element	IV-18
C. Biological Resources Element	IV-28
D. Archaeological and Historic Resources Element	IV-55
E. Air Quality Element	IV-71
F. Energy and Mineral Resources Element	IV-81
 <b>V. ENVIRONMENTAL HAZARDS</b>	
A. Geotechnical Element	V-1
B. Flooding and Hydrology Element	V-25
C. Noise Element	V-40
D. Wildland Fire Hazards	V-58
E. Hazardous and Toxic Materials Element	V-78
 <b>VI. PUBLIC SERVICES AND FACILITIES</b>	
A. Water, Wastewater and Utilities Element	VI-1
B. Public Building and Facilities Element	VI-9
C. Schools and Libraries Element	VI-22
D. Police and Fire Protection Element	VI-32
E. Emergency Preparedness Element	VI-40
 <b>VII. GLOSSARY OF TERMS AND ANACRONYMS</b>	 VII-1



**TABLE OF CONTENTS (cont'd)****LIST OF TABLES****Chapter III**

III-1	General Plan Buildout Summary	III-10
III-2	Residential Buildout Statistical Summary	III-14
III-3	Commercial and Industrial Buildout Statistical Summary	III-18
III-4	Public Facilities Buildout Statistical Summary	III-22
III-5	Open Space Buildout Statistical Summary	III-23
III-6	Age Distribution, 2003	III-27
III-7	Household Income Distribution	III-28
III-8	Top Employers in Banning, 2000	III-29
III-9	Housing Characteristics in Banning, 1990 vs.2000	III-29
III-10	Taxable Sales in Banning, 1998 – 2002	III-32
III-11	2003 Annual Expenditure Potential for General Plan Area Residents	III-33
III-12	Transient Occupancy Tax Revenue Trends	III-34
III-13	New Construction Trends in Banning, 2000 – 2003	III-35
III-14	Roadway Level-Of-Service Description/Quality of Traffic Flow	III-48
III-15	Level-Of-Service Volumes/Capacity Values for Various Roadway Classifications	III-50
III-16	Existing Conditions Summary for Major Roadways in the Planning Area	III-57
III-17	Buildout Roadway Classifications	III-61
III-18	Buildout Bridges	III-64
III-19	City of Banning Parks Inventory	III-86
III-20	Standards for Recreational Service Areas	III-91
III-21	Quantified Objectives Matrix, 1998 – 2005	III-114
III-22	Banning Population Growth	III-117
III-23	Population by Ethnicity	III-118
III-24	Age Distribution in Banning (1990 and 1999)	III-119
III-25	Number of Persons in Household	III-120
III-26	Household Composition by Type (1990)	III-121
III-27	Household Composition (1990)	III-121
III-28	City and County Income Rates (1989)	III-123
III-29	Banning Households by Income (1990)	III-123
III-30	Poverty Rates (1990)	III-124
III-31	Primary Manufacturing and Non-Manufacturing Employers in Banning Community Area	III-125
III-32	Pattern of Aging in the Banning Population	III-126
III-33	Tenure by Persons in Occupied Units	III-128
III-34	Mobility and Self-care Limitation Status of Civilian Non-Institutionalized Persons	III-129
III-35	Housing Estimates for the City of Banning (1990 through 2000)	III-133
III-36	Housing Estimates for the County of Riverside (1990 through 2000)	III-133
III-37	Permit Activity Summary	III-134
III-38	Type of Vacant Units in Banning (1990)	III-134
III-39	Tenure by Race and Hispanic Origin (1990)	III-135
III-40	Homeownership Rates	III-135
III-41	Tenure by Age of Householder (1990)	III-136

**TABLE OF CONTENTS (cont'd)**

III-42	Age of Housing Units	III-137
III-43	Number of Bedrooms Per Housing Unit	III-137
III-44	Rooms per Housing Unit (1990)	III-138
III-45	Persons Per Room in All Occupied Housing Units	III-138
III-46	Overcrowded Housing	III-139
III-47	Rental Rates in Banning (2000)	III-140
III-48	Mobile Home Park Space Rental Rates	III-140
III-49	Home Prices in Banning (1990 – 2000)	III-141
III-50	Comparative Average New Home Prices (1999)	III-141
III-51	Number of Households Paying Over 30 Percent of Income on Housing	III-142
III-52	Housing Expenditure Rate per Income Group	III-143
III-53	Affordability of Rental Housing in Relation to Income	III-143
III-54	Sold Units Affordable to Lower-Income Households (1999)	III-144
III-55	Regional Housing Needs Assessment (1999)	III-145
III-56	HUD Income Limits	III-145
III-57	5-Year Estimated Redevelopment Agency Low-Moderate Funds	III-146
III-58	Fair Market Rents for Existing Housing in Riverside County	III-148
III-59	Banning Vacant Land Summary	III-149
III-60	Monthly Payments and Total Interest at Various Interest Rates	III-150
III-61	Residential Development Standards	III-153
III-62	Summary of Banning Development and Permit Fees	III-155
III-63	Development Impact Fees	III-156
III-64	Engineering Department Fees	III-156

**Chapter IV**

IV-1	Existing Pumping and Capacity of City Water Facilities	IV-5
IV-2	Average Water Demand	IV-8
IV-3	Recommended Range of Maximum Perennial Yield	IV-9
IV-4	Remaining Capacity of Existing Water Sources	IV-10
IV-5	Capacity of Additional Water Resources	IV-12
IV-6	Open Space Lands	IV-23
IV-7	Sensitive Plant Species Reported from the Vicinity of Banning	IV-32
IV-8	Sensitive Fish, Amphibians and Reptiles Reported from the Vicinity of Banning	IV-36
IV-9	Sensitive Bird Species Reported from the Vicinity of Banning	IV-38
IV-10	Sensitive Mammals Reported from the Vicinity of Banning	IV-42
IV-11	Recorded Historic-Era Buildings and Other Features in the Planning Area	IV-62
IV-12	State and Federal Ambient Air quality Standards	IV-74

**Chapter V**

V-1	Estimated Horizontal Peak Ground Accelerations and Seismic Intensities in the Banning	V-12
V-2	Existing Noise Measurement Results	V-42
V-3	Existing Noise Contours on City Streets	V-44
V-4	Land Use Compatibility for Community Noise Environments	V-50
V-5	Buildout Noise Contours	V-51

---

**TABLE OF CONTENTS (cont'd)****LIST OF EXHIBITS****Chapter II: Introduction and Administration**

II-1	General Plan Vicinity Map	II-6
------	---------------------------	------

**Chapter III: Community Development**

III-1	General Plan Study Area Boundaries	III-3
III-2	Proposed General Plan Land Use Map	III-5
III-3	Redevelopment Areas	III-36
III-4	Existing General Plan Street System	III-53
III-5	Street Cross Sections	III-55
III-6	Proposed General Plan Street System	III-60
III-7	Traffic Signal Warrants at Buildout	III-63
III-8	Daily Traffic Volumes at Buildout at Freeway Interchanges	III-70
III-9	Parks and Recreation	III-87

**Chapter IV: Environmental Resources**

IV-1	Groundwater Storage Units in the Study Area	IV-6
IV-2	MSHCP Criteria and Special Linkage Areas	IV-49
IV-3	Yucaipa Onion Survey Area	IV-50
IV-4	Burrowing Owl Survey Areas	IV-51
IV-5	Los Angeles Pocket Mouse Survey Areas	IV-52
IV-6	Archaeological Resources Sensitivity Map	IV-58
IV-7	Historical Resources Sensitivity Map	IV-66
IV-8	Mineral Resource Zones	IV-84

**Chapter V: Environmental Hazards**

V-1	Geologic Map of the Study Area	V-3
V-2	Seismically Induced Settlement and Slope Instability in the Study Area	V-7
V-3	Faults in the Study Area	V-13
V-4	Liquefaction Susceptibility in the Study Area	V-18
V-5	Flood Zones in the Study Area	V-33
V-6	Existing Airport Noise Contours	V-47
V-7	Airport Noise Contours at Buildout	V-48
V-8	Historical Wildland Fires in the Banning Area	V-60
V-9	Very High Fire Severity Zone	V-62
V-10	Fire Threat Zones	V-64
V-11	Major Natural Gas and Fuel Lines in the Study Area	V-81

**Chapter VI: Public Services and Facilities**

VI-1	Public Buildings and Facilities	VI-18
------	---------------------------------	-------

**LIST OF APPENDICIES****Chapter V. ENVIRONMENTAL HAZARDS**

V-12	2017 Local Hazard Mitigation Plan	V-82
------	-----------------------------------	------

## **Exhibit B**

Notice of Exemption (NOE)  
(See Attachment No. 5)

## **ATTACHMENT 4**

Public Hearing Notice

**NOTICE OF PUBLIC HEARING AND NOTICE OF EXEMPTION (NOE) TO CONSIDER GENERAL PLAN AMENDMENT 19-2501 INCORPORATING THE LOCAL HAZARD MITIGATION PLAN (LHMP) INTO THE CITY OF BANNING GENERAL PLAN – SAFETY ELEMENT. ALL PARCELS IN THE CITY OF BANNING, CALIFORNIA**

NOTICE IS HEREBY GIVEN of a public hearing before the City of Banning City Council, to be held on Tuesday, June 11, 2019, at 5:00 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider the proposed the Notice of Exemption and General Plan Amendment. The proposed General Plan Amendment (GPA) effects all parcels within the City of Banning, California.

Information regarding the General Plan Amendment and the Local Hazard Mitigation Plan (LHMP) can be obtained by contacting the City's Community Development Department, Planning Division at (951) 922-3125, or by visiting the City Hall located at 99 East Ramsey Street, Banning. You may also go to the City of Banning website at <http://www.banningca.gov/>.

All parties interested in speaking either in support of or in opposition to this item are invited to attend the hearing, or to send their written comments to the Community Development Department, Planning Division, City of Banning at 99 E. Ramsey Street, P.O. Box 998, Banning, California, 92220.

If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the Planning Commission makes its recommendation on the proposal; or, you or someone else raised at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009).

BY ORDER OF THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA

Adam B. Rush, M.A., AICP  
Community Development Director

Dated: 5/28/2019  
Publish: 5/31/2019



## **ATTACHMENT 5**

Notice of Exemption (NOE)

## Notice of Exemption

## Appendix E

To: Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044

County Clerk

County of: Riverside

2724 Gateway Driver

Riverside, CA, 92507

From: (Public Agency): City of Banning  
99 East Ramsey Street  
Banning, CA, 92220

(Address)

Project Title: General Plan Amendment No. 19-2501 amending the Safety Element of the General Plan

Project Applicant: City of Banning Community Development Department

Project Location - Specific:

All Parcels and All Properties in the City of Banning

Project Location - City: Banning Project Location - County: Riverside

Description of Nature, Purpose and Beneficiaries of Project:

General Plan Amendment No. 19-2501 proposes to incorporate the Local Hazard Mitigation Plan (LHMP) into the Safety Element of the General Plan.

Name of Public Agency Approving Project: City of Banning

Name of Person or Agency Carrying Out Project: City of Banning

Exempt Status: (check one):

- ☒ Ministerial (Sec. 21080(b)(1); 15268);  
☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));  
☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));  
☐ Categorical Exemption. State type and section number: \_\_\_\_\_  
☐ Statutory Exemptions. State code number: \_\_\_\_\_

Reasons why project is exempt:

The project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(2); (2) In light of the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and since it can be seen with certainty there is no possibility that the activity in question may have a significant effect on the environment.

Lead Agency

Contact Person: Adam B. Rush, AICP

Area Code/Telephone/Extension: (951) 922-3131

If filed by applicant:

1. Attach certified document of exemption finding.  
 2. Has a Notice of Exemption been filed by the public agency approving the project? ☒ Yes ☐ No

Signature: [Signature] Date: June 11, 2019 Title: Community Dev. Dir.

☒ Signed by Lead Agency ☐ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.  
 Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: \_\_\_\_\_

## **ATTACHMENT 6**

Local Hazard Mitigation Plan

**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**



**CITY OF BANNING  
CITY COUNCIL REPORT/ PUBLIC HEARING**

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**PREPARED BY:** Art Vela, Director of Public Works

**MEETING DATE:** June 11, 2019

**SUBJECT:** Resolution, Confirming the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District No. 1 for Fiscal Year 2019/2020

**RECOMMENDED ACTION:**

Staff recommends that the City Council adopt Resolution:

1. That the City Council adopt Resolution, Confirming the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District (LMD) No. 1 for Fiscal Year 2019/2020 pursuant to the provisions of Part 2 of Division 15 of the California Streets and Highways Code.
2. Authorize and direct the City Clerk to file the diagram and assessment with the Riverside County Assessor/County Clerk-Recorder's Office.
3. Authorize the City Clerk to certify the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

**BACKGROUND:**

In accordance with the "Landscaping and Lighting Act of 1972" ("1972 Act") of the Streets and Highways Code, the City Council adopted a resolution on August 14, 1990 ordering the formation of LMD No. 1, ("the District"). An additional five tracts and three tentative tracts were annexed (Annexation No. 1) into LMD No. 1 when the City Council approved Resolution 2005-36 on May 10, 2005. A map displaying the LMD No. 1 is shown as 'Attachment 2'. On February 26, 2019 the City Council approved Resolution No. 2019-24, initiating proceedings for the fiscal year update of LMD No. 1 and ordering the City Engineer to prepare and to file a report in accordance with the 1972 Act. The District, by special benefit assessments, provides funding for the operation and maintenance of certain landscape areas within the City of Banning, all of which were constructed as part of



private development projects and all of which are located in the public right-of-way. The 1972 Act requires that assessments are to be levied according to benefit rather than according to assessed value.

Subsequently, on April 23, 2019, the City Council adopted Resolution No. 2019-44, approving the Engineer's Report. The Public Hearing date was rescheduled from May 28, 2019 to June 11, 2019. If enclosed Resolution is approved, will confirm the assessments for the Fiscal Year 2019/2020. The schedule updating LMD No. 1 is shown as "Attachment 3", and the Notice of Public Hearing is shown on "Attachment 4".

### **JUSTIFICATION:**

The City Council approved the formation of Landscape Maintenance District (LMD) No. 1 by adopting Resolution No. 1990-59 on August 14, 1990. The adoption of this Resolution will enable the City of Banning to assess the property owners located within LMD No. 1 to provide for the funding required to maintain landscape areas located within the public right-of-way directly benefiting said property owners.

### **FISCAL IMPACT:**

Based on the proposed assessments, the estimated revenues for Fiscal Year 2019/20 for LMD No. 1 will be approximately \$139,226, with the 2.7% Consumer Price Index (CPI) increase applied only to the existing tracts annexed into the LMD in 2005, all within Zone D. If approved, the annual assessment for a single-family dwelling in Zone D would increase from the current rate of \$204.85, to \$210.38.

The estimated expenses are \$151,000, a shortfall of approximately \$12,000 which will be covered by the fund balance, currently at \$298,151. The increase in expenses next Fiscal Year is due to the change in water rates from municipal to retail.

The assessment revenues will fund the landscape maintenance contract, electric and water utility costs and miscellaneous costs (additional planting materials and irrigation repairs, County Assessor's Roll charge, Advertisement, etc.).

### **ALTERNATIVES:**

1. Reject Said Resolution, which would result in the City of Banning not continuing with the process of assessing the homeowners and properties within LMD No. 1 a fee to pay for maintenance and operation costs. Expenses funded by the fee currently include the LMD contractor, utility costs (water and electric), miscellaneous costs (irrigation repair, flower, shrubs and tree replacement, etc.), and minor incidentals. Without an assessment, other funding sources would have to be utilized to pay for the expenses related to the operation and maintenance of LMD No.1 or services must be reduced.
2. Reject Resolution, and provide direction to staff.



**ATTACHMENTS:**

1. Resolution 2019-\_\_\_\_\_
2. LMD No. 1 Map for FY 2019/20
3. Tentative Schedule for Updating LMD No. 1
4. LMD No. 1 Assessments Publication

Approved by:

  
\_\_\_\_\_  
Douglas Schulze  
City Manager

# ***ATTACHMENT 2***

**(Landscape Maintenance District No. 1 Map for Fiscal Year 2019/2020)**

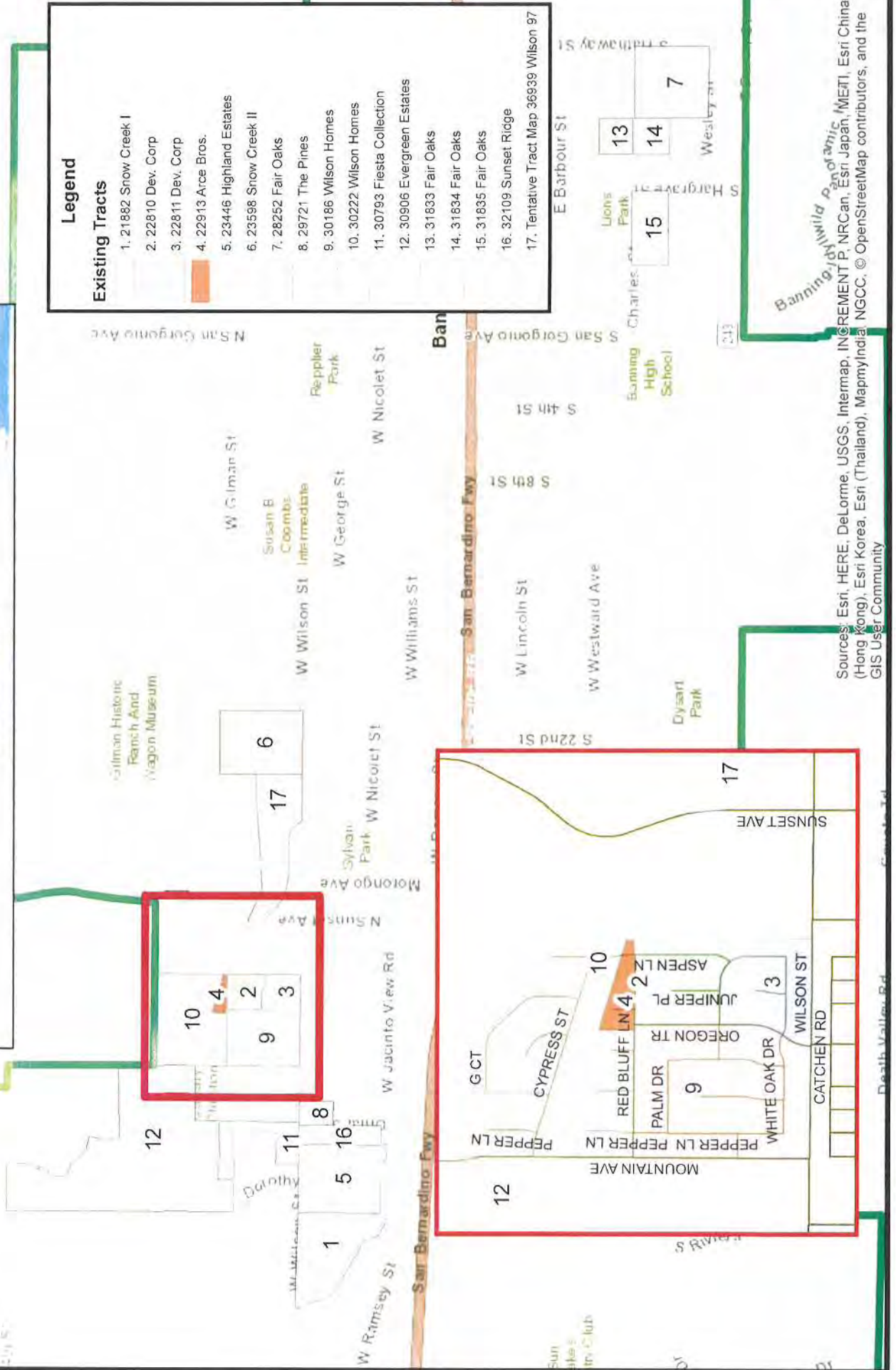
# Map of Landscape Maintenance District No. 1 2019-2020



## Legend

### Existing Tracts

1. 21882 Snow Creek I
2. 22810 Dev. Corp
3. 22811 Dev. Corp
4. 22913 Arce Bros.
5. 23446 Highland Estates
6. 23598 Snow Creek II
7. 28252 Fair Oaks
8. 29721 The Pines
9. 30186 Wilson Homes
10. 30222 Wilson Homes
11. 30793 Fiesta Collection
12. 30906 Evergreen Estates
13. 31833 Fair Oaks
14. 31834 Fair Oaks
15. 31835 Fair Oaks
16. 32109 Sunset Ridge
17. Tentative Tract Map 36939 Wilson 97



Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), MapmyIndia, NGCC, © OpenStreetMap contributors, and the GIS User Community

# ***ATTACHMENT 3***

**(Tentative Schedule for Updating Landscape Maintenance District No. 1)**

**Tentative Schedule for Updating Landscape Maintenance District No. 1**

Item	Council Meeting
Resolution Initiating Update	February 26, 2019
Resolution of Intention (Approving Engineer's Report)	April 23, 2019
Resolution Confirming Assessment (Public Hearing)	June 11, 2019 (revised from May 28, 2019)

# ***ATTACHMENT 1***

(Resolution No. 2019-\_\_\_\_)



## RESOLUTION 2019-\_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, CONFIRMING THE LEVY AND COLLECTION OF ASSESSMENTS WITHIN THE CITY OF BANNING'S LANDSCAPE MAINTENANCE DISTRICT NO. 1 FOR FISCAL YEAR 2019/2020, PURSUANT TO THE PROVISIONS OF PART 2 OF DIVISION 15 OF THE CALIFORNIA STREETS AND HIGHWAYS CODE**

**WHEREAS**, at its regularly scheduled meeting on February 26, 2019, the City Council of the City of Banning has by its Resolution 2019-24 initiated proceedings for the levy and collection of assessments for the 2019/2020 Fiscal Year for Landscape Maintenance District (LMD) No. 1, pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Part 2 of Division 15 of the California Streets and Highways Code; and

**WHEREAS**, at its regularly scheduled meeting on April 23, 2019, the City Council adopted its Resolution 2019-44, approving the report of the City Engineer and declaring the intention of the City Council to order the levy and collection of assessments to pay for the costs and expenses of maintaining and operating existing and proposed public landscaped areas in the City of Banning for Fiscal Year commencing July 1, 2019 and ending June 30, 2020; and

**WHEREAS**, as stated in the Engineer's Report dated April of 2019, a 2.7% CPI increase will only be applied to the existing tracts annexed into the LMD in 2005 (Annexation No.1); and

**WHEREAS**, the City Council had ordered the preparation of the Engineer's Report, and the City Engineer has prepared and filed with the City Clerk a report pursuant to law for the City Council's consideration; and

**WHEREAS**, after holding a duly noticed Public Hearing on June 11, 2019 and not having received any protest, the City Council orders the levy and collection of assessments to pay for the costs and expenses of maintaining and servicing existing and proposed public landscaping facilities in the City of Banning for the Fiscal Year commencing July 1, 2019 and ending June 30, 2020.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning as follows:

**SECTION 1.** The above recitals are all true and correct.

**SECTION 2.** Following notice duly given by publication, the City Council has held a full and fair Public Hearing regarding the levy of the proposed assessment within Landscape Maintenance District No. 1 for the Fiscal Year commencing July 1, 2019 and ending June 30, 2020, to pay for the costs and expenses of maintaining and servicing existing and proposed public landscaping and storm drain facilities installed and constructed within public places in the City of Banning, pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Part 2 of Division 15 of the California Streets and Highways Code. All interested persons were offered the opportunity to hear

and be heard regarding protests and objections to the levy and collection of the proposed assessment against lots or parcels of real property within City of Banning, Landscape Maintenance District No. 1. No objections to the levy and collection of the proposed assessments for the Fiscal Year commencing on July 1, 2019 and ending on June 30, 2020, were received by the City Council.

**SECTION 3.** The City Council hereby orders the operation and maintenance of the existing and proposed public landscape facilities installed and constructed in public places in the City of Banning and hereby confirms the diagram and assessment set forth in the Engineer's Report.

**SECTION 4.** The assessment is in compliance with the provisions of the "Landscaping and Lighting Act of 1972," being Part 2 of Division 15 of the California Streets and Highways Code and with any applicable provisions of Proposition 218.

**SECTION 5.** The assessment is levied without regard to property valuation.

**SECTION 6.** The assessment is levied for the purpose of paying the costs and expenses of maintaining and servicing existing and proposed public landscaping areas installed and constructed in public places in the City of Banning for the Fiscal Year commencing on July 1, 2019 and ending on June 30, 2020.

**SECTION 7.** The adoption of this Resolution constitutes the levy of an assessment for the Fiscal Year commencing on July 1, 2019 and ending on June 30, 2020.

**SECTION 8.** The operation, maintenance and servicing of public landscaping facilities shall be performed pursuant to law and the County Assessor/Recorder-Auditor of Riverside County shall enter on the County Assessment Roll opposite each lot or parcel of land the amount of the assessment and such assessments shall then be collected at the same time and in the same manner as the County taxes are collected. After collection by the County, the net amount of the assessments shall be paid to the City Treasurer.

**SECTION 9.** The Administrative Services Director shall deposit all monies representing assessments collected by the County to the credit of a special fund known as Improvement Fund, Landscape Maintenance District No. 1.

**SECTION 10.** The City Clerk is hereby authorized and directed to file the assessment, or a certified copy of the assessment, with the Riverside County, Assessor's Office, together with a certified copy of this Resolution upon its adoption.

**SECTION 11.** A certified copy of the assessment shall be filed in the Office of the City Clerk, with a duplicate copy on file in the Office of the City Engineer and open for public review.

**SECTION 12.** The City Clerk shall certify to the adoption of this Resolution and shall cause a certified resolution to be filed in the book of original resolutions.

**PASSED, APPROVED AND ADOPTED** this 11<sup>th</sup> day of June 2019.

---

Arthur L. Welch, Mayor  
City of Banning

**ATTEST:**

---

Daryl Betancur, Deputy City Clerk  
City of Banning

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

---

Kevin G. Ennis, City Attorney  
Richards, Watson & Gershon

**CERTIFICATION:**

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-\_\_\_\_\_, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 11<sup>th</sup> day of June, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Daryl Betancur, Deputy City Clerk  
City of Banning, California

# ***ATTACHMENT 4***

(Notice of Public Hearing)

**Century Group Newspapers:**  
**Fontana Herald News, Record Gazette,**  
**Highland Community News,**  
**Yucaipa/Calimesa News Mirror,**  
**Redlands Community News**

**Phone:**

**Fax:**

**www.centurygroup.com**

SONJA DE LA FUENTE LEGAL ADS  
 CITY OF BANNING LEGALS/Accounts Payable  
 P.O. BOX 998  
 BANNING, CA 92220  
 (951)922-3117

***Class Liner Ad #00165486 Summary:***

Slug Line: 165486 LMD PUBLIC HEARING

Net Cost \$124.10

Prepaid Amount \$0.00

Amount Due \$124.10

***Order Detail:***

Publication	Run Dates
4015 Banning Record Gazette	5/31/19 - 5/31/19

NOTICE OF PUBLIC HEARING PURSUANT TO LAW, NOTICE IS HEREBY GIVEN of a Public Hearing before the City Council of the City of Banning, to be held at a regular City Council Meeting on Tuesday, June 11, 2019, at 5:00 p.m. (rescheduled from May 28, 2019) at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California regarding a Resolution, Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance



District No. 1 for Fiscal Year 2019/20.

ALL INTERESTED PARTIES are invited to attend said hearing and present oral or written testimony on the matter or send their written comments to the City Clerk, P.O. Box 998, Banning, California 92220.

Information regarding the foregoing can be obtained by contacting the Engineering Division of the Public Works Department at the above address or by telephone at 951-922-3130.

Data relevant to this matter will be available for public viewing at Banning City Hall, 99 E. Ramsey Street, Banning, California for the period of 10 days prior to the Public Hearing.

If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the City Council makes its decision on the proposal; or, if a public hearing is held on the proposal, you or someone else must have raised those issues at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009).

BY ORDER OF THE CITY CLERK of the City of Banning, California

/s/ Daryl Betancur,

Deputy City Clerk

City of Banning, California

DATED: May 22, 2019

PUBLISH: May 31, 2019

Published in

The Record Gazette

No. 165486

05/31/2019

**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**



**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, Interim City Manager

**PREPARED BY:** Todd Hopkins, Fire Chief  
Laurie Sampson, Executive Assistant

**MEETING DATE:** June 11, 2019

**SUBJECT:** Adopt a Resolution Approving an Agreement for Two Years  
for Fire Services with Riverside County Fire Department

---

**RECOMMENDATION:**

Adopt a Resolution approving an Agreement for two years for fire service with Riverside County Fire Department.

**BACKGROUND:**

Since 1998 the City of Banning has entered into this agreement with the Riverside County Fire Department for medical, fire protection and other emergency response. This protection is provided by two type 1 engine companies of three firefighters (including one paramedic) per engine. The second engine providing fire protection to the south-west City area is split funded three ways with Beaumont and Riverside County.

**JUSTIFICATION:**

The City of Banning with approval of this agreement will keep its current level of service to all citizens within the City of Banning, and also cooperatively provide integrated, regional response to surrounding jurisdictions.

**FISCAL IMPACT:**

Cost to the City for 1.33 fire engine staffing:

FISCAL YEAR 2019/2020  
\$3,514,691

FISCAL YEAR 2020/2021  
\$3,643,430

**OPTIONS:**

1. Approve agreement from July 1, 2019-June 30, 2021.
2. Provide fire protection for the City of Banning by some other means.

**ATTACHMENTS:**

1. Resolution
2. Cooperative Agreement for the City of Banning
3. Exhibit A
4. Exhibit C
5. Exhibit D
6. Engine 20 Agreement

Approved by:

  
\_\_\_\_\_  
Douglas Schulze  
City Manager

# **ATTACHMENT 1**

## Resolution

## RESOLUTION NO. 2019-\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE FIRE PROTECTION AGREEMENT WITH RIVERSIDE COUNTY FIRE DEPARTMENT FOR TWO YEARS.**

**WHEREAS**, on June 11, 2019 the City of Banning and the Riverside County Fire Department enter into an agreement entitled "A Cooperative Agreement to Provide Fire Protection, Fire Prevention, Rescue, Fire Marshal, and Medical Services" Dated June 11, 2019, and

**WHEREAS**, THE City of Banning and Riverside County Fire desire to continue this agreement each fiscal year, the Riverside County Fire Department will provide an updated Exhibit "A" during budget planning process each year, and

**WHEREAS**, the purpose of the Exhibit "A" is to provide timely adjustment to the agreement if needed, and

**NOW, THEREFORE, BE IT RESOLVED**, the City Council of the City of Banning hereby approve the "Cooperative Agreement" for fire services with the Riverside County Fire Department.

**SECTION 1.** the City Clerk shall certify to the adoption of this Resolution and shall cause a certified resolution to be filed in the book of original resolutions.

**PASSED, APPROVED AND ADOPTED** this 11th day of June, 2019.

\_\_\_\_\_  
Arthur L. Welch, Mayor  
City of Banning, California

**ATTEST:**

\_\_\_\_\_  
Daryl Betancur, Deputy City Clerk  
City of Banning, California



**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

---

Kevin G. Ennis, City Attorney  
Richards Watson Gershon

[THIS SPACE INTENTIONALLY LEFT BLANK]

**CERTIFICATION:**

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2019-\_\_ was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 11th day of June, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Daryl Betancur, Deputy City Clerk  
City of Banning, California

## EXHIBIT "A"

TO THE COOPERATIVE AGREEMENT TO PROVIDE FIRE PROTECTION, FIRE  
PREVENTION, RESCUE AND MEDICAL EMERGENCY SERVICES FOR THE CITY  
OF BANNING

ESTIMATE DATED APRIL 5, 2019 FOR FY 2020/2021

*\*See notation below for cost estimate assumptions*

	CAPTAIN	CAPTAIN MEDICS	ENGINEER	ENGINEER MEDICS	FF II	FF II MEDICS	TOTALS
Medic Engine	*0 1		*0 1	*0 1.0	*0 3	*0 2	*0 8
<b>STA #89</b>							
Medic Engine	249,808 1		438,321 2		377,872 2	650,829 3	1,716,829 8
SUBTOTALS	249,808		438,321		377,872	650,829	1,716,829
SUBTOTAL STAFF	1		2		2	3	8

**\*Engine 20 Staffing on separate additional Exhibit "**

FIRE SAFETY SPECIALIST (PCN 001262	152,029	each	152,029 1
SUBTOTAL			\$ 152,029 9

**SUPPORT SERVICES**

Administrative/Operation	22,708	per assigned Staff **	190,976 8.41
Volunteer Program	6,567	Per Entity Allocation	6,567 1.0
Medic Program		Medic FTE/Defib Basis	28,029 3.0
Battalion Chief Support	81,642	.27 FTE per Station	122,464 1.5
Fleet Support	65,387	per Fire Suppression Equip	130,773 2.0
ECC Support		Calls/Station Basis	170,515
Comm/IT Support		Calls/Station Basis	322,280
Hazmat Support			27,530
SUPPORT SERVICES SUBTOTAL			999,135

**ESTIMATED DIRECT CHARGES**

FIRE ENGINE USE AGREEMENT	25,800	each engine	39,686
COOPERATIVE FIRE ENGINE 20 STAFFING SHARE AGREEMENT			51,600 2.0
			\$684,151

TOTAL STAFF COUNT 9.00

TOTAL **ESTIMATED** CITY BUDGET **\$3,643,430**

8.0	Assigned Staff
0.41	Battalion Chief Support
**	8.41 Total Assigned Staff

**SUPPORT SERVICES**

**Administrative & Operational Services**

Finance

Training

Data Processing

Accounting

Personnel

Procurement

Emergency Services

Fire Fighting Equip.

Office Supplies/Equip.

1.5	Fire Stations
4,958	Number of Calls
3	Assigned Medic FTE
2	Monitors/Defibs
1.5	Hazmat Stations
19	Number of Hazmat Calls

Volunteer Program - Support staff, Workers Comp, and Personal Liability Insurance

Medic Program - Support staff, Training, Certification, Case Review & Reporting, Monitor/ Defibrillator replacement cycle.

Battalion Chief Support - Pooled BC coverage for Cities/Agencies that do not include BC staffing as part of their contracted services.

Fleet Support - Support staff, automotive costs, vehicle/engine maintenance, fuel costs

Emergency Command Center Support - Dispatch services costs

Communications / IT Support - Support staff, communications, radio maintenance, computer support functions

Facility Support - Facility maintenance staff with associated operating costs.

Hazmat Program - Support staff, operating costs, and vehicle replacement

#### FY 19/20 ESTIMATED POSITION SALARIES TOP STEP

352,645	DEPUTY CHIEF	25,800	FIRE ENGINE
348,017	DIV CHIEF	22,708	SRVDEL
290,484	BAT CHIEF	6,567	VOL DEL
249,808	CAPT	7,599	MEDIC FTE
283,861	CAPT MEDIC	2,616	MEDIC MONITORS/DEFIBS REPLACEMEN
219,160	ENG	81,642	BATT DEL
250,287	ENG/MEDIC	18,424	ECC STATION
188,936	FF II	28.82	ECC CALLS
216,943	FF II/MEDIC	65,387	FLEET SUPPORT
155,337	FIRE SAFETY SUPERVISOR	34,821	COMM/IT STATION
152,029	FIRE SAFETY SPECIALIST	54.47	COMM/IT CALLS
126,680	FIRE SYSTEMS INSPECTOR	1,759	FACILITY STATION
74,878	OFFICE ASSISTANT III	471.88	FACILITY FTE
87,654	SECRETARY I	4,873	HAZMAT STATION
117,235	EMERGENCY SVC COORDINATOR	955.17	HAZMAT CALLS
230,366	COUNTY FIRE MARSHAL	2,073	HAZMAT VEHICLE REPLACEMENT
168,447	COUNTY DEPUTY FIRE MARSHAL		

#### \*Cost Assumptions:

- All Salaries updated to known MOU as of February 2019 and CALFIRE BU8 Summary Letter
- Benefits increased based on 5 year average of historical increases/decreases
- Admin Fee Per March 2019 Matrix with no change estimated
- Uniform Allowance increased and benefit calculation removed

#### FY 20/21 DIRECT BILL ACCOUNT CODES

520230	Cellular Phone	522360	Maint-Extermination
520300	Pager Service	522380	Maint-Critical Systems
520320	Telephone Service	522410	Maint-Health & Safety
520800	Household Expense	522860	Medical Supplies
520805	Appliances	522890	Pharmaceuticals
520830	Laundry Services	523220	Licenses And Permits
520840	Household Furnishings	523680	Office Equip Non Fixe
520845	Trash	526700	Rent-Lease Building
521380	Maint-Copier Machines	529500	Electricity
521440	Maint-Kitchen Equipment	529510	Heating Fuel
521540	Maint-Office Equipment	529550	Water
521660	Maint-Telephone	537240	Interfnd Exp-Utilities
521680	Maint-Fuel Tanks	542060	Capital Improvements
522310	Maint-Building and Improveme		
522340	Station Budgeted Maint-Building and Improvement		

# **ATTACHMENT 2**

## **Cooperative Agreement for the City of Banning**

**A COOPERATIVE AGREEMENT  
TO PROVIDE FIRE PROTECTION, FIRE PREVENTION, RESCUE, FIRE MARSHAL  
AND MEDICAL EMERGENCY SERVICES FOR THE CITY OF BANNING**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the County of Riverside, a political subdivision of the State of California, on behalf of the Fire Department, (hereinafter referred to as "COUNTY") and the City of Banning a duly created city, (hereinafter referred to as "CITY"), whereby it is agreed as follows:

**SECTION I: PURPOSE**

The purpose of this Agreement is to arrange for COUNTY, through its Cooperative Fire Programs Fire Protection Reimbursement Agreement ("CAL FIRE Agreement") with the California Department of Forestry and Fire Protection ("CAL FIRE") to provide CITY with fire protection, hazardous materials mitigation, technical rescue response, fire marshal, medical emergency services, and public service assists (hereinafter called "Fire Services"). The Riverside County Fire Department invoices for disaster preparedness and response provided by Riverside County Emergency Management Department. This Agreement is entered into pursuant to the authority granted by Government Code Sections §55600 et seq., and will provide a unified, integrated, cooperative, regional fire protection system. COUNTY's ability to perform under this Agreement is subject to the terms and conditions of the CAL FIRE Agreement.

**SECTION II: DESIGNATION OF FIRE CHIEF**

A. The County Fire Chief appointed by the Board of Supervisors, or his designee, (hereinafter referred to as "Chief") shall represent COUNTY and CITY during the period of this Agreement and Chief shall, under the supervision and direction of the County Board of Supervisors, have charge of the organization described in Exhibit "A", attached hereto and made a part hereof, for the purpose of providing Fire Services as deemed necessary to satisfy the needs of both the COUNTY and CITY, except upon those lands wherein other agencies of government have responsibility for the same or similar Fire Services.

B. The COUNTY will assign an existing Chief Officer as the Fire Department Liaison ("Fire Liaison"). The Chief may delegate certain authority to the Fire Liaison, as the Chief's duly authorized designee and the Fire Liaison shall be responsible for directing the Fire Services provided to CITY as set forth in Exhibit "A".

C. COUNTY will be allowed flexibility in the assignment of available personnel and equipment in order to provide the Fire Services as agreed upon herein.



### SECTION III: PAYMENT FOR SERVICES

A. CITY shall annually appropriate a fiscal year budget to support the Fire Services designated at a level of service mutually agreed upon by both parties and as set forth in Exhibit "A" for the term of this Agreement. This Exhibit may be amended in writing by mutual agreement by both parties or when a CITY requested increase or reduction in services is approved by COUNTY.

B. COUNTY provides fire personnel and services through its CAL FIRE Agreement. In the event CITY desires an increase or decrease in CAL FIRE or COUNTY civil service employees or services assigned to CITY as provided for in Exhibit "A," CITY shall provide one hundred twenty (120) days written notice of the proposed, requested increase or decrease. Proper notification shall include the following: (1) The total amount of increase or decrease; (2) The effective date of the increase or decrease; and (3) The number of employees, by classification, affected by the proposed increase or decrease. If such notice is not provided, CITY shall reimburse COUNTY for relocation costs incurred by COUNTY because of the increase or decrease, in addition to any other remedies available resulting from the increase or decrease in services. COUNTY is under no obligation to approve any requested increase or decrease, and it is expressly understood by the parties that in no event will COUNTY authorize or approve CITY's request to reduce services below the COUNTY Board of Supervisors approved staffing level for any fire station, or to reduce services to the extent that the services provided under this Agreement are borne by other jurisdictions. COUNTY shall render a written decision on whether to allow or deny the increase or decrease within thirty (30) days of the notice provided pursuant to this section.

C. CITY shall pay COUNTY actual costs for Fire Services pursuant to this Agreement. COUNTY shall make a claim to CITY for the actual cost of contracted services, pursuant to Exhibit "A," on a quarterly basis. The COUNTY is mandated per Government Code Section §51350 for full cost recovery. CITY shall pay each claim, in full, within thirty (30) days after receipt thereof.

D. Any changes to the salaries or expenses set forth in Exhibit "A" made necessary by action of the Legislature, CAL FIRE, or any other public agency with authority to direct changes in the level of salaries or expenses, shall be paid from the funds represented as set forth in Exhibit "A." The CITY is obligated to expend or appropriate any sum in excess of Exhibit "A" increased by action of the Legislature, CAL FIRE, or any other public agency with authority to direct changes. If within thirty (30) days after notice, in writing, from COUNTY to CITY that the actual cost of maintaining the services specified in Exhibit "A" as a result of action by the Legislature, CAL-FIRE, or other public agency will exceed the total amount specified therein, and CITY has not agreed to make available the necessary additional funds, COUNTY shall have the right to unilaterally reduce the services furnished under this Agreement by an appropriate amount and shall promptly notify CITY, in writing, specifying the services to be reduced. Any COUNTY or CAL-FIRE personnel reduction resulting solely due to an increase in employee salaries or expenses occurring after signing this Agreement and set forth in

Exhibit "A" that CITY does not agree to fund, as described above, shall not be subject to relocation expense reimbursement by CITY. If CITY desires to add funds to the total included herein to cover the cost of increased salaries or services necessitated by actions described in this paragraph, such increase shall be accomplished by an additional appropriation by the City Council of CITY, and an amendment to Exhibit "A" approved by the parties hereto.

E. Chief may be authorized to negotiate and execute any amendments to Exhibit "A" of this Agreement on behalf of COUNTY as authorized by the Board of Supervisors. CITY shall designate a "Contract Administrator" who shall, under the supervision and direction of CITY, be authorized to execute amendments to Exhibit "A" on behalf of CITY.

F. \_\_\_\_\_ [ ] (Check only if applicable, and please initial to acknowledge) Additional terms as set forth in the attached Exhibit "B" are incorporated herein and shall additionally apply to this agreement regarding payment of services.

G. \_\_\_\_\_ [ ] (Check only if applicable, and please initial to acknowledge) Additional terms as set forth in the attached Exhibit "C" are incorporated herein and shall additionally apply to this agreement regarding payment for the Fire Engine Use Agreement.

H. \_\_\_\_\_ [ ] (Check only if applicable, and please initial to acknowledge) Additional terms as set forth in the attached Exhibit "D" are incorporated herein and shall additionally apply to this agreement regarding payment for Fire Marshall Services.

I. Notwithstanding Paragraph G, as it relates to the Fire Engine Use Agreement, herein if applicable, additional terms as set forth are incorporated herein and shall additionally apply to this agreement regarding payment of services. In the event that a fire engine, owned and maintained by the CITY has a catastrophic failure, the COUNTY Fire Chief may allow use of a COUNTY fire engine, free of charge up to one hundred twenty (120) days. After the initial one hundred twenty (120) days, a rental fee will be applied to the CITY invoice for use of said COUNTY fire engine. The rental fee shall be One Thousand Four Hundred Thirteen Dollars (\$1,413) per day; or Nine Thousand Eight Hundred Ninety-Six Dollars (\$9,896) per week.

J. Notwithstanding Paragraph H, as it relates to Fire Marshal services herein, if applicable, additional terms as set forth are incorporated herein and shall additionally apply to this agreement regarding Fire Marshal services. In the event the CITY elects not to use Fire Marshal services outlined in Paragraph H (Exhibit D), the services must be provided by the COUNTY Office of the Fire Marshal pursuant to Health and Safety Code sections 13145 and 13146 and at a cost to the developer as outlined in COUNTY Ordinance 671(Establishing Consolidated Fees For Land Use and Related Functions).

#### SECTION IV: INITIAL TERM AND AMENDMENT

A. The term of this Agreement shall be from July 1, 2019, to June 30, 2021.

B. One (1) year prior to the date of expiration of this Agreement, CITY shall give COUNTY written notice of whether CITY intends to not enter into a new Agreement with COUNTY for Fire Services and, if so, whether CITY intends to request a change in the level of Fire Services provided under this Agreement.

#### SECTION V: TERMINATION

During the terms of this Agreement, this Agreement may only be terminated by the voters of either the COUNTY or the CITY pursuant to Government Code §55603.5.

#### SECTION VI: COOPERATIVE OPERATIONS

All Fire Services contemplated under this Agreement shall be performed by both parties to this Agreement working as one unit; therefore, personnel and/or equipment belonging to either CITY or COUNTY may be temporarily dispatched elsewhere from time to time for mutual aid.

#### SECTION VII: MUTUAL AID

Pursuant to Health and Safety Code Sections 13050 et seq., when rendering mutual aid or assistance, COUNTY may, at the request of CITY, demand payment of charges and seek reimbursement of CITY costs for personnel, equipment use, and operating expenses as funded herein, under authority given by Health and Safety Code Sections 13051 and 13054. COUNTY, in seeking said reimbursement pursuant to such request of CITY, shall represent the CITY by following the procedures set forth in Health and Safety Code Section 13052. Any recovery of CITY costs, less actual expenses, shall be paid or credited to the CITY, as directed by CITY.

In all such instances, COUNTY shall give timely notice of the possible application of Health and Safety Code Sections 13051 and 3054 to the officer designated by CITY.

#### SECTION VIII: SUPPRESSION COST RECOVERY

As provided in Health and Safety Code Section 13009, COUNTY may bring an action for collection of suppression costs of any fire caused by negligence, violation of law, or failure to correct noticed fire safety violations. When using CITY equipment and personnel under the terms of this Agreement, COUNTY may bring such an action for collection of costs incurred by CITY and the COUNTY. In such a case CITY appoints and designates COUNTY as its agent in said collection proceedings. In the event of recovery, COUNTY shall apportion the recovered amount via the annual Cost Allocation Plan. This recovery does not include CITY resources outside of this Cooperative Agreement. Those resources would require the CITY to obtain cost recovery directly.

In all such instances, COUNTY shall give timely notice of the possible application of Health and Safety Code Section 13009 to the officer designated by CITY.



## SECTION IX: PROPERTY ACCOUNTING

All personal property provided by CITY and by COUNTY for the purpose of providing Fire Services under the terms of this Agreement shall be marked and accounted for in such a manner as to conform to the standard operating procedure established by the COUNTY for the segregation, care, and use of the respective property of each.

## SECTION X: FACILITY

CITY shall provide Fire Station(s), strategically located to provide standard response time within City of Banning from which fire operations shall be conducted. If the Fire Station(s) are owned by the CITY, the CITY shall maintain the facilities at CITY's cost and expense. In the event CITY requests COUNTY to undertake repairs or maintenance costs or services, the costs and expenses of such repairs or maintenance shall be reimbursed to COUNTY through the Support Services Cost Allocation, or as a direct Invoice to the CITY.

## SECTION XI: INDEMNIFICATION AND HOLD HARMLESS

To the fullest extent permitted by applicable law, COUNTY shall and does agree to indemnify, protect, defend and hold harmless CITY, its agencies, districts, special districts and departments, their respective directors, officers, elected and appointed officials, employees, agents and representatives (collectively, "**Indemnitees**") for, from and against any and all liabilities, claims, damages, losses, liens, causes of action, suits, awards, judgments and expenses, attorney and/or consultant fees and costs, taxable or otherwise, of any nature, kind or description of any person or entity, directly or indirectly arising out of, caused by, or resulting from (1) the Services performed hereunder by COUNTY, or any part thereof, (2) the Agreement, including any approved amendments or modifications, or (3) any negligent act or omission of COUNTY, its officers, employees, subcontractors, agents, or representatives (collectively, "**Liabilities**"). Notwithstanding the foregoing, the only Liabilities with respect to which COUNTY's obligation to indemnify, including the cost to defend, the Indemnitees does not apply is with respect to Liabilities resulting from the negligence or willful misconduct of an Indemnitee, or to the extent such claims do not arise out of, pertain to or relate to the Scope of Work in the Agreement.

To the fullest extent permitted by applicable law, CITY shall and does agree to indemnify, protect, defend and hold harmless COUNTY, its agencies, departments, directors, officers, agents, Board of Supervisors, elected and appointed officials and representatives (collectively, "**Indemnitees**") for, from and against any and all liabilities, claims, damages, losses, liens, causes of action, suits, awards, judgments and expenses, attorney and/or consultant fees and costs, taxable or otherwise, of any nature, kind or description of any person or entity, directly or indirectly arising out of, caused by, or resulting from (1) the services performed hereunder, by CITY, or any part thereof, (2) the Agreement, including any approved amendments or modifications, or (3) any negligent act or omission of CITY its officers, employees, subcontractors, agents, or representatives (collectively, "**Liabilities**"). Notwithstanding the foregoing, the only

Liabilities with respect to which CITY's obligation to indemnify, including the cost to defend, the Indemnitees does not apply is with respect to Liabilities resulting from the negligence or willful misconduct of an Indemnitee, or to the extent such claims do not arise out of, pertain to or relate to the Scope of Work in the Agreement.

## SECTION XII: AUDIT

A. COUNTY and CITY agree that their designated representative shall have the right to review and to copy any records and supporting documentation of the other party hereto, pertaining to the performance of this Agreement. COUNTY and CITY agree to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated or as required by law, and to allow the auditor(s) of the other party access to such records during normal business hours. COUNTY and CITY agree to a similar right to audit records in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

B. Each party shall bear their own costs in performing a requested audit.

## SECTION XIII: DISPUTES

CITY shall select and appoint a "Contract Administrator" who shall, under the supervision and direction of CITY, be available for contract resolution or policy intervention with COUNTY, when, upon determination by the Chief that a situation exists under this Agreement in which a decision to serve the interest of CITY has the potential to conflict with COUNTY interest or policy. Any dispute concerning a question of fact arising under the terms of this Agreement which is not disposed of within a reasonable period of time by the CITY and COUNTY employees normally responsible for the administration of this Agreement shall be brought to the attention of the Chief Executive Officer (or designated representative) of each organization for joint resolution. For purposes of this provision, a "reasonable period of time" shall be ten (10) calendar days or less. CITY and COUNTY agree to continue with the responsibilities under this Agreement during any dispute. Disputes that are not resolved informally by and between CITY and COUNTY representatives may be resolved, by mutual agreement of the parties, through mediation. Such mediator will be jointly selected by the parties. The costs associated with mediator shall be shared equally among the participating parties. If the mediation does not resolve the issue(s), or if the parties cannot agree to mediation, the parties reserve the right to seek remedies as provided by law or in equity. The parties agree, pursuant to *Battaglia Enterprises v. Superior Court* (2013) 215 Cal.App.4<sup>th</sup> 309, that each of the parties are sophisticated and negotiated this agreement and this venue at arm's length. Pursuant to this Agreement, the parties agree that venue for litigation shall be in the Superior Court of Riverside County. Should any party attempt to defeat this section and challenge venue in Superior Court, the party challenging venue stipulates to request the Court change venue to San Bernardino County and shall not ask for venue in any other County.

Any claims or causes of actions, whether they arise out of unresolved disputes as specified in this Section or claims by third parties that are made against the COUNTY, shall be submitted to the Office of the Clerk of the Board for the County of Riverside in a timely manner. For claims made against the COUNTY that involve CalFire employees, to the extent permissible under the COUNTY's contract with CalFire, the claims will be forwarded on to CalFire for processing.

#### SECTION XIV: ATTORNEY'S FEES

If CITY fails to remit payments for services rendered pursuant to any provision of this Agreement, COUNTY may seek recovery of fees through litigation, in addition to all other remedies available.

In the event of litigation between COUNTY and CITY to enforce any of the provisions of this Agreement or any right of either party hereto, the unsuccessful party to such litigation agrees to pay the prevailing party's costs and expenses, including reasonable attorneys' fees, all of which shall be included in and as a part of the judgment rendered in such litigation.

#### SECTION XV: DELIVERY OF NOTICES

Any notices to be served pursuant to this Agreement shall be considered delivered when deposited in the United States mail and addressed to:

COUNTY OF RIVERSIDE  
Riverside County Fire Chief  
210 West San Jacinto Avenue  
Perris, CA 92570

CITY OF BANNING  
City Manager  
City of Banning  
99 East Ramsey Street  
Banning, CA 92220-0998

Provisions of this section do not preclude any notices being delivered in person to the addresses shown above. Delivery in person shall constitute service hereunder, effective when such service is made.

#### SECTION XVI: ENTIRE CONTRACT

This Agreement contains the whole contract between the parties for the provision of Fire Services. It may be amended or modified upon the mutual written consent of the parties hereto where in accordance with applicable state law. This Agreement does NOT supplement other specific agreements entered into by both parties for equipment or facilities, and excepting those equipment or facilities agreements, this Agreement cancels and supersedes any previous agreement for the same or similar services.

[Signature Provisions on following page]



IN WITNESS WHEREOF, the duly authorized officials of the parties hereto have, in their respective capacities, set their hands as of the date first hereinabove written.

## CITY OF BANNING

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Douglas Schulze, City Manager

ATTEST:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Daryl Betancur  
Deputy City ClerkBy: \_\_\_\_\_  
Kevin G. Ennis, Esq.  
City Attorney

(SEAL)

## COUNTY OF RIVERSIDE

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST:

APPROVED AS TO FORM:  
GREGORY P. PRIAMOS,  
County CounselKECIA HARPER-IHEM  
Clerk of the BoardBy: \_\_\_\_\_  
DeputyBy: \_\_\_\_\_  
GREGORY P. PRIAMOS  
County Counsel

(SEAL)

# **ATTACHMENT 3**

## **Exhibit A**

EXHIBIT "A"  
TO THE COOPERATIVE AGREEMENT  
TO PROVIDE FIRE PROTECTION, FIRE PREVENTION, RESCUE  
AND MEDICAL EMERGENCY SERVICES FOR THE CITY OF BANNING  
ESTIMATE DATED APRIL 5, 2019 FOR FY 2019/2020  
AND FY 2020/2021

**CITY BUDGETED EXHIBIT "A" ESTIMATES**

FISCAL YEAR 2019/2020	\$3,514,691
FISCAL YEAR 2020/2021	\$3,643,430
TOTAL CITY BUDGET <b>ESTIMATES</b> FOR 2019/2020 AND FY 2020/2021	<u>\$7,158,121</u>

TO THE COOPERATIVE AGREEMENT  
TO PROVIDE FIRE PROTECTION, FIRE PREVENTION, RESCUE  
AND MEDICAL EMERGENCY SERVICES FOR THE CITY OF BANNING

ESTIMATE DATED APRIL 5, 2019 FOR FY 2019/2020

*\*See notation below for cost estimate assumptions*

STA #20	CAPTAIN	CAPTAIN MEDICS	ENGINEER	ENGINEER MEDICS	FF II	FF II MEDICS	TOTALS
Medic Engine	*0 1		*0 1	*0 1.0	*0 3	*0 2	*0 8
<b>STA #89</b>							
Medic Engine	246,135 1		431,968 2		372,409 2	654,842 3	1,696,354 8
SUBTOTALS	246,135		431,968		372,409	645,842	1,696,354
SUBTOTAL STAFF	1		2		2	3	8
<b>*Engine 20 Staffing on separate additional Exhibit "</b>							
FIRE SAFETY SPECIALIST (PCN 00126230)				144,085	each		144,085 1
SUBTOTAL							\$144,085 9
<b>SUPPORT SERVICES</b>							
Administrative/Operation				21,627	per assigned Staff **		181,882 8.41
Volunteer Program				6,254	Per Entity Allocation		6,254 1.0
Medic Program					Medic FTE/Defib Basis		26,694 3.0
Battalion Chief Support				77,755	.27 FTE per Station		116,632 1.5
Fleet Support				62,273	per Fire Suppression Equip		124,546 2.0
ECC Support					Calls/Station Basis		162,395
Comm/IT Support					Calls/Station Basis		306,933
Hazmat Support							26,219
SUPPORT SERVICES SUBTOTAL							951,556
<b>ESTIMATED DIRECT CHARGES</b>							
FIRE ENGINE USE AGREEMENT				25,800	each engine		39,686
COOPERATIVE FIRE ENGINE 20 STAFFING SHARE AGREEMENT							51,600 2.0
							631,411
TOTAL STAFF COUNT							9.00
TOTAL <b>ESTIMATED</b> CITY BUDGET							\$3,514,691

8.0	Assigned Staff
0.41	Battalion Chief Support
**	8.41 Total Assigned Staff

**SUPPORT SERVICES**

Administrative & Operational Services	1.5	Fire Stations
Finance	4,958	Number of Calls
Training	3	Assigned Medic FTE
Data Processing	2	Monitors/Defibs
Accounting	1.5	Hazmat Stations
Personnel	19	Number of Hazmat Calls
Procurement		
Emergency Services		
Fire Fighting Equip.		
Office Supplies/Equip.		

Volunteer Program - Support staff, Workers Comp, and Personal Liability Insurance

Medic Program - Support staff, Training, Certification, Case Review & Reporting, Monitor/Defibrillator replacement cycle.

Battalion Chief Support - Pooled BC coverage for Cities/Agencies that do not include BC s as part of their contracted services.

Fleet Support - Support staff, automotive costs, vehicle/engine maintenance, fuel costs

Emergency Command Center Support - Dispatch services costs

Communications / IT Support - Support staff, communications, radio maintenance, computer support functions

Facility Support - Facility maintenance staff with associated operating costs.

Hazmat Program - Support staff, operating costs, and vehicle replacement

#### FY 19/20 ESTIMATED POSITION SALARIES TOP STEP

346,564	DEPUTY CHIEF	25,800	FIRE ENGINE
342,016	DIV CHIEF	21,627	SRVDEL
286,208	BAT CHIEF	6,254	VOL DEL
246,135	CAPT	7,237	MEDIC FTE
281,374	CAPT MEDIC	2,491	MEDIC MONITORS/DEFIBS REPLACEMEN
215,984	ENG	77,755	BATT DEL
248,214	ENG/MEDIC	17,547	ECC STATION
186,204	FF II	27.45	ECC CALLS
215,281	FF II/MEDIC	62,273	FLEET SUPPORT
153,799	FIRE SAFETY SUPERVISOR	33,163	COMM/IT STATION
144,085	FIRE SAFETY SPECIALIST	51.87	COMM/IT CALLS
124,995	FIRE SYSTEMS INSPECTOR	1,676	FACILITY STATION
74,136	OFFICE ASSISTANT III	449.41	FACILITY FTE
86,787	SECRETARY I	4,641	HAZMAT STATION
116,074	EMERGENCY SVC COORDINATOR	909.68	HAZMAT CALLS
226,794	COUNTY FIRE MARSHAL	1,974	HAZMAT VEHICLE REPLACEMENT
165,934	COUNTY DEPUTY FIRE MARSHAL		

#### \*Cost Assumptions:

- All Salaries based on 19/20 Rate Letter dated 02/19/2019
- Support Services based on 18/19 Board Approved Cost Allocation dated 09/18/2018
- Benefits based on Prelim Rate Matrix emailed March 12, 2019

#### FY 19/20 DIRECT BILL ACCOUNT CODES

520230	Cellular Phone	522360	Maint-Extermination
520300	Pager Service	522380	Maint-Critical Systems
520320	Telephone Service	522410	Maint-Health & Safety
520800	Household Expense	522860	Medical Supplies
520805	Appliances	522890	Pharmaceuticals
520830	Laundry Services	523220	Licenses And Permits
520840	Household Furnishings	523680	Office Equip Non Fixe
520845	Trash	526700	Rent-Lease Building
521380	Maint-Copier Machines	529500	Electricity
521440	Maint-Kitchen Equipment	529510	Heating Fuel
521540	Maint-Office Equipment	529550	Water
521660	Maint-Telephone	537240	Interfnd Exp-Utilities
521680	Maint-Fuel Tanks	542060	Capital Improvements
522310	Maint-Building and Improve		
522340	Station Budgeted Maint-Building and Improvement		

# **ATTACHMENT 4**

## **Exhibit C**



## EXHIBIT "C"

**TO THE COOPERATIVE AGREEMENT  
TO PROVIDE FIRE PROTECTION, FIRE PREVENTION, RESCUE  
AND MEDICAL EMERGENCY SERVICES FOR THE CITY OF BANNING  
DATED JULY 1, 2019**

**PAYMENT FOR SERVICES  
ADDITIONAL SERVICES  
FIRE ENGINE USE AGREEMENT**

Station 20

Engine E20, RCO No. 05-814	\$ <u>25,800.00</u>
----------------------------	---------------------

Station 89

Engine E89, RCO No. 07-815	\$ <u>25,800.00</u>
----------------------------	---------------------

**\$ 51,600.00**

The Fire Engine Use Agreement is utilized in the event that a fire engine(s) which was initially purchased by the CITY, and then the CITY elects to have the COUNTY take responsibility of said fire engine(s). The Fire Engine Use Agreement guarantees the CITY the use of this fire engine(s), the COUNTY network of equipment, and resources of the COUNTY.

This fire engine(s) shall be used as an integrated unit for Fire Services as set forth in this Cooperative Agreement between the COUNTY and CITY, and shall be stationed primarily in the CITY. The change in ownership of the fire engine does not waive or supersede any responsibilities of the CITY pursuant to this agreement. This exhibit is strictly to further detail for the CITY, the responsibilities and costs associated within the Cooperative Agreement between the COUNTY and CITY; therefore, the Fire Engine Use Agreement is inseparable.

The CITY will have the option of transferring title of said fire engine(s) to the COUNTY. If the CITY transfers title of said fire engine(s) to the County, the County will take ownership of the said fire engine(s), and the County will maintain insurance on said fire engine(s). If the CITY opts to maintain ownership and title of said fire engine(s), the CITY will maintain insurance on said fire engine(s). Proof of Insurance is to be provided to the COUNTY.

The COUNTY will ensure a working fire engine(s) is available for the CITY at all times under this agreement. All capital improvements and/or betterments to the fire engine(s) listed above, will be the responsibility and paid for by the owner of said fire engine(s). All other maintenance and repairs to the fire engine(s) listed above, will be the responsibility and paid for by the COUNTY under this Agreement.

When the Riverside County Fire Department Fleet personnel determine the fire engine(s) listed above is due for replacement, the COUNTY will purchase a new fire engine(s); and, the owner of the old fire engine(s) may survey said fire engine(s) or reallocate as a second roll response fire engine.

The annual cost for this service is calculated at 1/20 of the replacement cost. The current replacement cost is \$516,000. If this Agreement is entered into mid-year, the annual cost will be prorated accordingly.

The CITY may opt out of this Agreement at any time in writing and the costs will be prorated accordingly by fiscal year. No refunds will be provided for any prior payments. If the fire engine(s) have been titled to the COUNTY and the fire engine(s) are still within their useful life cycle, the ownership will not revert back to the CITY unless the entire Cooperative Agreement is terminated.

# **ATTACHMENT 5**

## **Exhibit D**

**EXHIBIT "D"**

**TO THE COOPERATIVE AGREEMENT  
TO PROVIDE FIRE PROTECTION, FIRE PREVENTION, FIRE MARSHAL, RESCUE  
AND MEDICAL EMERGENCY SERVICES FOR THE CITY OF BANNING  
DATED JULY 1, 2019**

**PAYMENT FOR ADDITIONAL SERVICES  
OFFICE OF THE FIRE MARSHAL AGREEMENT**

The Fire Marshal Agreement is utilized in the event a CITY elects to fund locally direct COUNTY Fire Marshal personnel at the CITY to perform the duties of the Office of the Fire Marshal. These duties include:

For conformance with applicable laws, codes and regulations concerning fire protection and life safety -

- Review Planning and Development Cases for the CITY
- Review and inspection of construction development for the CITY
- State mandated Fire/Life Safety Inspections in accordance with Health and Safety Code 13146.1, 13146.2, 13146.3, 13217 and 13235
- Review, Permitting and Inspection of Special Events
- Investigation of fire safety complaints
- Meeting with development applicants and customers

Administrative activities -

- Creation and maintenance of forms for review and inspection of construction development and fire/life safety inspections.
- Provide information to customers on CITY Ordinances and Standards for construction
- Creation and maintenance of Information Bulletins, Technical Policies and Standards for Fire Protection in the CITY
- Provide recommendations on updating CITY Ordinances and Standards in regards to fire/life safety

In the event CITY desires an increase in the Office of the Fire Marshal duties services provides, CITY shall provide sixty (60) days written notice of the proposed increase in services. COUNTY is under no obligation to approve any requested increase. COUNTY shall render a written decision on whether to allow or deny the increase within thirty (30) days of the notice provided pursuant to this section.

It is the CITY responsibility to provide funding for all direct operating supplies for each position in accordance with COUNTY requirements and/or standards. These supplies include, but are not limited to:

- Vehicle and regular maintenance
- Training
- Office space, furniture, Code & Standard reference books, and general & field supplies

- All IT and Communication tools (such as cell phone, computer, etc.)
- Uniform costs

All costs including salaries and benefits will be included in each quarterly invoice as outlined in the Cooperative Agreement.

The CITY may opt out of this Agreement and eliminate funding for locally direct COUNTY Fire Marshal personnel at the CITY in writing with a minimum notice of one hundred and twenty (120) days. The costs will be prorated accordingly by services provided and fiscal year.

It is the responsibility of the CITY to obtain cost recovery for the Fire Marshal services provided by these personnel for the CITY.

# **ATTACHMENT 6**

## **Engine 20 Agreement**



**A COOPERATIVE AGREEMENT BETWEEN THE CITY OF BANNING, THE CITY OF  
BEAUMONT, AND THE COUNTY OF RIVERSIDE TO SHARE THE COST OF A FIRE  
ENGINE COMPANY**

THIS AGREEMENT, was made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the County of Riverside, a political subdivision of the State of California, on behalf of the Fire Department, (hereinafter referred to as "COUNTY") and the City of Banning and the City of Beaumont, duly created cities (hereinafter referred to as "CITIES"). And hereinafter may collectively be referred to as the "Parties".

**SECTION I: PURPOSE**

A. The COUNTY has contracted with the City of Banning, individually pursuant to that certain Cooperative Agreement to provide fire protection, disaster preparedness and response, fire prevention, rescue, hazardous materials mitigation, technical rescue response, medical emergency services, and public service assists for the City of Banning, dated November 3, 2015, by and between the City of Banning and the County of Riverside (the "Banning Cooperative Agreement").

B. The COUNTY has contracted with the City of Beaumont, individually pursuant to that certain Cooperative Agreement to provide fire protection, disaster preparedness and response, fire prevention, rescue, hazardous materials mitigation, technical rescue response, medical emergency services, and public service assists for the City of Beaumont, dated June 21, 2016, by and between the City of Beaumont and the County of Riverside (the "Beaumont Cooperative Agreement").

C. The CITIES and COUNTY desire to enter into a cost sharing agreement for one (1) fire engine company which will be of mutual benefit for all involved agencies. The CITIES and COUNTY agree that the current fire engine company provides service to the City of Banning as well as to the City of Beaumont and unincorporated territory of the County.

D. The City of Beaumont and COUNTY desire to contribute among the participating parties, with *each party paying one-third (1/3) of the fire engine staffing costs.*

//

//

//

NOW, THEREFORE, IT IS AGREED as follows:

## SECTION II: COOPERATIVE OPERATIONS

Emergency Responses: The fire engine shall be dispatched, when available, to all emergencies within the jurisdictions of the CITIES and COUNTY.

## SECTION III: COST SHARE

The Parties agree the cost of the fire engine shall be billed to CITIES by the COUNTY within the normal quarterly billing pursuant to the CITIES respective Cooperative Agreements and the cost will be shown as a line item on that bill. The total amount due under this Agreement by each party will be invoiced on a pro-rata share basis on each party's respective quarterly billing. The CITIES will receive an estimated cost of the fire engine staffing based on the top step salaries of the personnel assigned to the fire engine 20, at the first of the fiscal year. The cost pool of the fire engine staffing costs shall consist of the salaries, benefits, administrative costs of Full Time Employees, and Medic Support Services costs of One (1) Fire Captains, One (1) Fire Apparatus Engineers, One (1) Fire Apparatus Paramedic, Two (2) Firefighter Paramedics, and Three (3) Firefighters.

In the event that the City of Banning secures and receives money from additional funding sources which it allocates to the services described herein, City of Banning shall give COUNTY notice within thirty (30) days, or within a reasonable time thereof, of the amount received. COUNTY will seek reimbursement on behalf of the COUNTY and the City of Beaumont by separate invoice.

## SECTION IV: TERM

The term of this Agreement shall be from July 1, 2018 to June 30, 2021. Any party to this Agreement may terminate this Agreement by providing a written notice of termination to the other party's hereto no less than one (1) year prior to the expiration of the term hereof. If such notice is given unilaterally by COUNTY except any notice issued because of actions of CAL FIRE or CITIES, COUNTY agrees to continue to provide Fire Services to CITIES until such time as CITIES has a reasonable opportunity to implement alternative Fire Services. In no event shall this Agreement be terminated by either party after June 30, 2020.

The City of Banning agrees to continue to seek alternative funding sources for fire protection services.

## SECTION V: INDEMNIFICATION, AUDIT, DISPUTES, & ATTORNEY'S FEES

To the fullest extent permitted by applicable law, COUNTY shall and does agree to indemnify, protect, defend and hold harmless CITIES, their agencies, districts, special districts and departments, their respective directors, officers, elected and appointed officials, employees, agents and representatives (collectively, "**City Indemnitees**") for, from and against any and all liabilities, claims, damages, losses, liens, causes of action, suits, awards, judgments and expenses, attorney and/or consultant fees and costs, taxable or otherwise, of any nature, kind or description of any person or entity, directly or indirectly arising out of, caused by, or resulting from (1) the services performed hereunder by COUNTY, or any part thereof, (2) the Agreement, including any approved amendments or modifications, or (3) any negligent act or omission of COUNTY, its officers, employees, subcontractors, agents, or representatives (collectively, "**County Liabilities**"). Notwithstanding the foregoing, the only County Liabilities with respect to which COUNTY's obligation to indemnify, including the cost to defend, the Indemnitees does not apply is with respect to County Liabilities resulting from the negligence or willful misconduct of a City Indemnatee, or to the extent such claims do not arise out of, pertain to or relate to the Scope of Work in the Agreement.

To the fullest extent permitted by applicable law, but subject to the limits in this paragraph, each CITY shall and does agree to indemnify, protect, defend and hold harmless COUNTY, its agencies, departments, directors, officers, agents, Board of Supervisors, elected and appointed officials and representatives (collectively, "**County Indemnitees**") for, from and against any and all liabilities, claims, damages, losses, liens, causes of action, suits, awards, judgments and expenses, attorney and/or consultant fees and costs, taxable or otherwise, of any nature, kind or description of any person or entity, directly or indirectly arising out of, caused by, or resulting from (1) the services performed hereunder by the respective CITY, or any part thereof, (2) the Agreement, including any approved amendments or modifications, or (3) any negligent act or omission of the respective CITY, its officers, employees, subcontractors, agents, or representatives (collectively, "**City Liabilities**"). No CITY shall be required to indemnify, protect, defend and hold harmless County Indemnitees for the acts or omissions of another CITY giving rise to City Liabilities in that other City pursuant to this Agreement. Furthermore, and notwithstanding the first sentence of this paragraph, the City Liabilities with respect to which each CITY's obligation to indemnify, including the cost to defend, the County Indemnitees does not apply with respect to City Liabilities resulting from the negligence or willful misconduct of a County Indemnatee, or to the extent such claims do not arise out of, pertain to or relate to the Scope of Work in the Agreement."

## SECTION VI. OWNERSHIP OF THE FIRE ENGINE

The City of Banning owns fire engine 20 and will pay the engine maintenance costs through the cost allocation plan as outlined in the "Banning Cooperative Agreement.

## SECTION VII: DELIVERY OF NOTICES

All notices permitted or required under this agreement shall be given to the respective parties at the following address, or at such other addresses as the respective parties may provide in writing for this purpose.

COUNTY OF RIVERSIDE  
County Fire Chief  
210 West San Jacinto Avenue  
San Jacinto, CA 92570

CITY OF BEAUMONT  
City Manager  
550 East 6<sup>th</sup> Street  
Beaumont, CA 92223

CITY OF BANNING  
City Manager  
99 East Ramsey Street  
Banning, CA 92220-0998

Any notice required to be given hereunder to either party shall be given by personal delivery or be depositing such notice in the U.S. mail to the address listed, certified with return receipt requested, and pre-paid postage affixed. Such notice shall be deemed made when personally delivered or when mailed. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of method of service.

## SECTION VIII. GENERAL PROVISIONS

### A. ALTERATION OF TERMS.

No addition to, or alteration of, the terms of this Agreement, whether by written or verbal understanding of the Parties, their officers, agents, or employees, shall be valid unless made in the form of a written amendment to this Agreement, which is formally approved and executed by all Parties.

### B. JURISDICTION AND VENUE.

This Agreement is to be construed under the laws of the State of California. The Parties agree to the jurisdiction of the appropriate courts in the County of Riverside, State of California.

### C. WAIVER.

Any waiver by any of the Parties, separately or collectively, of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term thereof. Failure on the part of the Parties to require exact, full and complete compliance with any terms of this



Agreement shall not be construed as in any manner changing the terms hereof, or estopping any one of the CITIES or COUNTY from enforcement hereof.

D. SEVERABILITY.

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

E. ADMINISTRATION

1. The COUNTY Fire Chief shall administer this Agreement on behalf of the County of Riverside.

2. The CITIES respective City Manager shall administer this Agreement on behalf of its own City.

F. ENTIRE AGREEMENT.

This Agreement is intended by the Parties hereto as a final expression of their understanding, with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral or written, in connection therewith.

///

///

///

[Signature Provisions on following page]

IN WITNESS WHEREOF, the duly authorized officials of the parties hereto have, in their respective capacities, set their hands as of the date first hereinabove written.

Dated: \_\_\_\_\_

**CITY OF BANNING**

By: \_\_\_\_\_  
Douglas Schulze, City Manager

ATTEST:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Daryl Betancur, Deputy City Clerk

By: \_\_\_\_\_  
Kevin G. Ennis, City Attorney

(SEAL)

Dated: \_\_\_\_\_

**CITY OF BEAUMONT**

By: \_\_\_\_\_  
Nancy Carroll, Mayor

ATTEST:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Andreanna Pfeiffer, City Clerk

By: \_\_\_\_\_  
City Attorney

[ADDITIONAL SIGNATURE PROVISIONS ON NEXT PAGE]



Dated: \_\_\_\_\_

COUNTY OF RIVERSIDE

By: \_\_\_\_\_  
Chairman, Board of Supervisors

APPROVED AS TO FORM:  
GREGORY P. PRIAMOS,  
County Counsel

ATTEST:  
Kecia Harper-Ihem  
Clerk of the Board

By: \_\_\_\_\_  
GREGORY P. PRIAMOS,  
Deputy County Counsel

By: \_\_\_\_\_  
Deputy

(SEAL)

**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**



## CITY OF BANNING CITY COUNCIL REPORT

**TO:** CITY COUNCIL

**FROM:** Doug Schulze, City Manager

**PREPARED BY:** Matthew Hamner, Chief of Police  
Phil Holder, Captain

**MEETING DATE:** May 28, 2019

**SUBJECT:** Adopt Resolution, Approving Service Agreements with JP Nelson & Sons Construction, Inc., and Deguire Weed Abatement, Inc., for Weed Abatement Services.

### **RECOMMENDED ACTION:**

The City Council adopt Resolution:

1. Approving a Service Agreement with JP Nelson & Sons Construction, Inc., in an amount not-to-exceed \$20,000 and Deguire Weed Abatement, Inc., in an amount not-to-exceed \$20,000 for Weed Abatement Services for Fiscal Year 2019/2020 with the option to renew for three (3) additional single year periods.
2. Authorizing the City Manager to execute the Weed Abatement Service Agreements with JP Nelson & Sons Construction, Inc., and Deguire Weed Abatement, Inc., for Fiscal Year 2019/2020 with the option to renew for three (3) additional single year periods.

### **GOAL STATEMENT:**

Weed Abatements Services assist the City in meeting Goal 4 – Public Health & Safety.

### **BACKGROUND:**

On January 3, 2019 staff solicited proposals from qualified “Weed Abatement Service” contractors for the City of Banning.

The scope of work for these services includes the removal of vegetation and debris from properties in the City of Banning to reduce fire danger and to be in compliance with the City's Municipal Codes.

Staff advertised the RFP on the PlanetBids website, which sent notifications of the opportunity to eighteen (18) Weed Abatement Service Contractors. In response to these efforts, the City received four (4) proposals from the following Weed Abatement Contractors:

1. JP Nelson & Sons Construction, Inc.
2. Environmental Klean Up, Inc.
3. Deguire Weed Abatement, Inc.
4. West SWPPP Services

The proposals from JP Nelson & Sons Construction, Inc., and Deguire Weed Abatement, Inc., were recognized by staff as the most cost effective and responsive bids made. Two contractors were selected for this year's services to better address the expected above normal weed growth, caused by the higher than typical rainfall amounts, in a timely manner.

#### **FISCAL IMPACT:**

Funding for Weed Abatement Services in the amount not-to-exceed \$40,000 will be available in the Fiscal Year 2019/2020 Code Enforcement budget. Upon proof, the Weed Abatement Service Contractor has completed an assigned abatement job, the City will pay the contractor for its services, per the City contract. The City will then seek reimbursement from the owner of the property on which the work was completed. No additional funds are required.

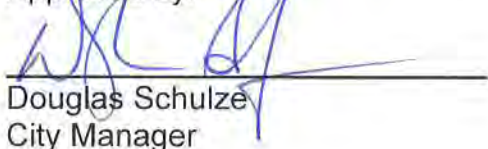
#### **ALTERNATIVES:**

1. Adopt the Resolution
2. Reject the Resolution. If rejected, effective July 1, 2019, the City's Code Enforcement Department will not be able to address Municipal City Code violations in regards to overgrown vegetation on private property until such time that a vendor is selected through another RFP process.

#### **ATTACHMENTS:**

1. Resolution 2019-\_\_\_\_
2. Request for Proposal (RFP) Specifications
3. PlantBids Publication with List of Weed Abatement Contractors Solicited
4. Submitted Proposals
5. Bid Tabulations

Approved by:

  
 Douglas Schulze  
 City Manager

# ***ATTACHMENT 1***

(Resolution 2019-\_\_\_\_)



## RESOLUTION 2019-\_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING A SERVICE AGREEMENT CONTRACT WITH DEGUIRE WEED ABATEMENT, INC., IN AN AMOUNT NOT TO EXCEED \$20,000 AND JP NELSON & SONS CONSTRUCTION, INC., IN AN AMOUNT NOT TO EXCEED \$20,000 FOR WEED ABATEMENT SERVICES IN THE CITY OF BANNING FOR FISCAL YEAR 2019/2020.**

**WHEREAS**, on January 3, 2019 staff solicited proposals from qualified companies to provide weed abatement services for private properties throughout the City; and

**WHEREAS**, staff advertised the RFP on the PlanetBids website, which sent notifications to eighteen (18) weed abatement service contractors and received four (4) proposals; and

**WHEREAS**, the scope of work for these services includes the removal of vegetation and debris from properties not in compliance with City of Banning Municipal Codes; and

**WHEREAS**, staff recommends the shared award of a Weed Abatement Services Agreement to JP Nelson & Sons Construction, Inc., in an amount not-to-exceed \$20,000 and Deguire Weed Abatement, Inc., in an amount not-to-exceed \$20,000 for Fiscal Year 2019/2020 with the option to renew for three (3) additional single years upon a satisfactory annual review of provided services; and

**WHEREAS**, funding will be available in the City's Code Enforcement accounts during Fiscal year 2019/2020 in the amount of not-to-exceed \$40,000.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning as follows:

**SECTION 1.** The Banning City Council adopts Resolution 2019-\_\_\_\_\_ approving a shared Service Agreement with JP Nelson & Sons Construction, Inc., in an amount not-to-exceed \$20,000 and Deguire Weed Abatement, Inc., in an amount not-to-exceed \$20,000 for Weed Abatement Services in the City of Banning for Fiscal Year 2019/2020.

**SECTION 2.** The City Manager or his designee is authorized to make necessary budget adjustments, appropriations and transfers related to this services agreement.

**SECTION 3.** The City Manager or his designee is authorized to execute the Service Agreement Contract with JP Nelson & Sons Construction, Inc., and Deguire Weed Abatement, Inc.

**SECTION 4.** The City Clerk shall certify to the adoption of this Resolution and shall cause a certified Resolution to be filed in the book of original resolutions.



**PASSED, ADOPTED AND APPROVED** this 28<sup>th</sup> day of May, 2019.

\_\_\_\_\_  
Arthur L. Welch, Mayor  
City of Banning

**ATTEST:**

\_\_\_\_\_  
Daryl A. Betancur, Deputy City Clerk  
City of Banning

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

\_\_\_\_\_  
Kevin G. Ennis, City Attorney  
Richards, Watson & Gershon

**CERTIFICATION:**

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2019-\_\_\_\_\_ was adopted by the City Council of the City of Banning at a regular meeting thereof held on the 28<sup>th</sup> day of May, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Daryl A. Betancur, Deputy City Clerk  
City of Banning, California

# ***ATTACHMENT 2***

(Request for Proposal - RFP)



**REQUEST FOR PROPOSALS  
FOR PROFESSIONAL SERVICES  
FOR  
WEED ABATEMENT SERVICES**

**RFP No. 19-023**

**Issued by the City of Banning Purchasing Department for:**

**Police Department  
125 East Ramsey Street  
Banning, California 92220**

**REQUEST FOR PROPOSALS (RFP) NO. 19-023****WEED ABATEMENT SERVICES**

Dear Proposers:

The City of Banning (hereinafter referred to as the "City") is requesting proposals from a qualified public entity or private firm, to establish a contract for the scope of services outlined in this request for proposals.

NOTICE IS HEREBY GIVEN that online price and document submittals must be uploaded to the online bidding system in accordance with the instructions included herein, on or before the time and date set forth in the schedule of events. It shall be the responsibility of the proposer to upload their proposal before the announced time. However, responses may be submitted at any time prior to the deadline. (Submitted proposals may be withdrawn and resubmitted at any time prior to the deadline, and cannot be viewed by City staff until the close date and time.)

**SOLICITATION DOCUMENTS:** To obtain a copy of the solicitation documents, please visit <http://www.planetbids.com/portal/portal.cfm?CompanyID=33077>. If you are not currently registered with the City of Banning through Planet Bids, please click on the "New Vendor Registration" button and then complete the electronic supplier registration. After registering your firm, click on the "Bid Opportunities" button to view current bid opportunities. Find an active project of interest on the list to double-click on, and then click "Place e-Bid" to download solicitation documents for that project and become a prospective bidder. Proposals may only be submitted by companies who are listed as a prospective bidder on the electronic bidding website for each project that they wish to submit a response to. Firms must also check the web site periodically for addenda information as failure to download and acknowledge any and all addenda in the submittal will result in proposer disqualification.

**RESPONSIVE PROPOSALS:** Once listed on the prospective bidders list, companies may submit their proposals on the Planet Bids electronic bidding system. The City will not accept proposals submitted by companies who are not on the prospective bidders list, or from companies who have submitted a proposal via facsimile, email, mail, or any other format not permitted by this solicitation. Further instructions for submitting proposals are explained in this solicitation. Companies are to adhere to all of the submittal instructions and requirements outlined in this solicitation in order to be considered responsive to this request for proposals.

## Request for Proposals

### Table of Contents

#### Sections

---

1. Introduction/Purpose
2. Schedule of Events
3. Background
4. Prerequisites
5. Scope of Services
6. General Terms and Conditions
7. Inquiries
8. Completion of Proposal
9. Delivery/Submission of Proposals
10. Alternative Proposals
11. Proposal Format and Content
12. Examination of RFP and Sites of Work
13. Addenda
14. Withdrawal of Proposal
15. Public Records
16. Evaluation of Proposals
17. Conflict of Interest
18. Rejection of Proposals
19. Protest Procedures
20. Contract Term
21. Contract Documents
22. Execution of Agreement
23. Failure to Execute Agreement
24. Cancellation

#### Exhibits

- A. Proposal Forms (to be filled out and submitted with, and as part of proposal response)
- B. Scope of Services
- C. Sample Professional Consultant Service Agreement



## 1. INTRODUCTION/PURPOSE

The City of Banning ("City") is seeking a qualified entity or individual ("Company") to provide weed abatement services. The City anticipates selecting one firm to perform the services.

Proposals are requested from Companies that have a demonstrated ability to perform the tasks identified in this Request for Proposal ("RFP").

## 2. SCHEDULE OF EVENTS

This request for proposal will be governed by the following tentative schedule. All dates are subject to change at the discretion of the City.:

Event	Date	Time
Request for Proposals Released	01/03/2019	N/A
Non-Mandatory Pre-Proposal Meeting	01/17/2019	1:00pm PST
Final Questions Due	01/18/2019	Before 3:00pm PST
Responses to Questions Released	01/23/2019	N/A
<b>Proposals Due</b>	<b>01/28/2019</b>	<b>Before 2:00pm PST</b>
Interviews, If Needed	Week of 01/28/2019	To be determined
Tentative City Council Meeting to Consider Awarding Contract	02/26/2019	5:00pm

## 3. BACKGROUND

The City of Banning is strategically located astride Interstate 10 between the Inland Empire and the Coachella Valley in the San Geronio Pass. The City, incorporated in 1913, has a rich and colorful history.

Initially Banning served as a stagecoach and railroad stop between the Arizona territories and Los Angeles. This history has contributed to the present-day spirit of pioneer resourcefulness and "can do" attitude that is so prevalent in the community.

Banning is a friendly and wholesome place to work and raise a family. Desirable executive housing is available, as well as moderate and lower income housing. Clean air, ample water supplies and the memorable and inspiring scenic vistas of both Mt. San Geronio and Mt. San Jacinto, the 2 tallest peaks in Southern California, are additional amenities which make the City of Banning a logical choice as a development opportunity in the Southern California area.

#### 4. PREREQUISITES

Proposals will only be considered from Companies that meet the following prerequisites:

- Have at least three (3) years' of experience under a legally registered business name, in providing services of a similar type and scope as described in the Scope of Services ("Services") (Exhibit "B"). Have not filed for bankruptcy under any business name over the past five (5) years.
- Have registered as a "Prospective Bidder" on the City's electronic Current Prospective Bidders List. Companies can register at:

<http://www.planetbids.com/portal/portal.cfm?CompanyID=33077>

- Once registered, Companies must download this RFP by clicking "Place eBid" under their name in order to appear on the Bidder's List as a "Prospective Bidder." Companies that fail to specifically download this RFP will not appear on the Bidders' List and will be unable to participate or be considered for this RFP.
- All prospective Companies are invited to attend the non-mandatory pre-proposal meeting on the date and time set forth in the schedule of events. The meeting will be held at City Hall in the Large Conference Room located at 99 E. Ramsey St. Banning CA 92220.
- If applicable, Company and/or its key personnel, shall hold an appropriate license for the Company's discipline and the Services on the date the Proposal is submitted.
- If applicable, Company shall have registered with the Department of Industrial Relations and any other required organizations.

#### 5. SCOPE OF WORK

The City is seeking weed abatement services. The selected Company shall provide the services required in Exhibit B, Scope of Services, attached hereto and incorporated herein.

#### 6. GENERAL TERMS AND CONDITIONS

The successful company will be required to execute a Professional Services Agreement ("Agreement"). A sample is attached as Exhibit "C". The successful company must meet all insurance requirements in the Agreement. All terms and conditions of the Agreement are non-negotiable. Companies must possess valid City of Banning Business License throughout the term on the contract. Failure to execute the Agreement and furnish the required insurance within the required time period shall be just cause for the rescission of the award. If any of the successful Companies refuse or fail to execute the Agreement, the City may award the Agreement to the next most qualified Company.

#### 7. INQUIRIES

If prior to the date fixed for submission of Proposals, a prospective Company discovers any ambiguity, conflict, discrepancy, omission or other errors in this RFP or any of its appendices or exhibits, the Company shall immediately notify the City of such error in writing and request modification or clarification of the document. Modifications shall be made by written Addenda to the RFP.

If a Company fails to notify the City, prior to the date fixed for submissions of Proposals, of an error in the RFP known to the Company, or an error that reasonably should have been known to the Company, the Company shall submit its Proposal at its own risk, and if the Company is awarded a Contract, it shall not be entitled to additional compensation or time by reason of the error or its later correction.

All communications regarding technical, scope, and/or project related questions and requests for clarifications, changes, exceptions, and deviations to the terms and conditions set forth in this RFP **shall be submitted via "Q&A"** through the City's Electronic Bidding System, PlanetBids Vendor Portal before the deadline and according to these specifications herein. Any and all other bidding communications shall only be with **Shiloh A. Rogers, Purchasing Manager**, at (951) 922-3121.

**The Final day for receipt of questions from the Proposer shall be on or before the due date indicated in the schedule of events section.** To ensure fairness and avoid misunderstandings, **all communications must be in written format** and submitted **only** in the format set forth above. Any verbal communications will not be considered or responded to. All questions received by the due date will be logged and reviewed and if required, a response will be provided via an addendum to the RFP that will be posted on the City's website. **Any communications, whether written or verbal, with any City Councilmember, City staff, or RFP evaluation panel member other than the individual indicated above, prior to award of a contract by City Council, is strictly prohibited and the Proposer shall be disqualified from consideration.**

## **8. COMPLETION OF PROPOSAL**

Proposals shall be completed in all respects as required by this RFP. A proposal may be rejected if conditional or incomplete, or if it contains any alterations or other irregularities of any kind, and will be rejected if any such defect or irregularity can materially affect the quality of the proposal. Proposals which contain false or misleading statements may be rejected. If, in the opinion of the City's Selection Committee, such information was intended to mislead the City in its evaluation of the proposal, and the attribute, condition, or capability is a requirement of this RFP, the proposal will be rejected. Statements made by a Company shall also be without ambiguity, and with adequate elaboration, where necessary, for clear understanding.

Unauthorized conditions, exemptions, limitations, qualifications, or provisions attached to a Proposal will render it non-responsive and will cause its rejection.

The Company, in responding to this RFP, must submit Proposals in the format identified in this RFP. The Proposal must address all requirements of the RFP even if a “no response” is appropriate.

Costs for developing Proposals are entirely the responsibility of the Company and shall not be chargeable to the City. The City shall not be liable for any costs incurred in response to this RFP, including but not limited to, costs for any interviews, presentations, or other follow-up information necessary as part of the selection process. All costs shall be borne by the Company responding to this RFP. The Company responding to this RFP shall hold the City harmless from any liability, claim, and expense whatsoever incurred by or on behalf of the Company

## **9. DELIVERY/SUBMISSION OF PROPOSALS**

**The Final day for submission of proposals shall be on or before the due date indicated in the schedule of events section.**

Companies shall register on the City’s Electronic Bidding System, <http://www.planetbids.com/portal/portal.cfm?CompanyID=33077>. Once registered, Companies must **download the RFP by clicking “Place eBid” while logged in** under their own name and identification number to appear on the Current Prospective Bidders List as a “Prospective Bidder.” Companies that fail to download the RFP by clicking “Place eBid” will not appear on the Current Prospective Bidders List and their proposals will be considered non-responsive. If a Company is unable to register or download the RFP from the bidding website, a representative may contact Planet Bids at (818) 992-1771.

All proposal documents and supplementary documents must be uploaded using the City’s bidding website prior to event date and time as instructed in this solicitation. Once file(s) have been uploaded and the Submission Status shows as “Submitted” the submission is complete. At that point respondents will receive an email confirmation from the bidding website.

The City reserves the right to reject any and all proposals and to waive information and minor irregularities in any proposal received.

Acceptance of Terms and Conditions - Submission of a proposal pursuant to this RFP shall constitute acknowledgment and acceptance of all terms and conditions hereinafter set forth in this RFP.

The time and date are fixed, and extensions will not be granted unless specifically stated by the City in an addendum to this RFP. Proposals not received before the bid event time will not be accepted.

## **10. ALTERNATIVE PROPOSALS**

Only one proposal is to be submitted by each Company for this RFP. Multiple simultaneous proposals will result in rejection of all Proposals submitted by Company. A Company may, prior

to the proposal due date and time, withdraw a proposal and submit a new proposal, so long as the new proposal is submitted before the proposal due date and time.

## **11. PROPOSAL FORMAT AND CONTENT**

Proposals should be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Responses should emphasize the Company's demonstrated capability to perform work of this type. Emphasis should be concentrated on completeness and clarity of content.

Proposals shall adhere to the following format for organization and content. Proposals must be typed and arranged/divided in the following sequence to facilitate evaluation:

- Cover Letter
- Statement of Understanding and Approach
- Company Information
- Company Personnel
- Experience and References
- Evidence of Insurance
- Financial Capability
- Disclosure
- Price Proposal
- Proposal Forms ("Exhibit A" - to be filled out and submitted with, and as part of proposal)

### **a. Cover Letter**

The cover letter shall include a brief general statement of intent to perform the services and confirm that all elements of the RFP have been reviewed and understood. The letter shall include a brief summary of Company's qualifications and Company's willingness to enter into a contract under the terms and conditions prescribed by this RFP and in the Sample Agreement. The letter must identify a single person for contact during the RFP review process.

### **b. Statement of Understanding and Approach**

This section must demonstrate an understanding of the Services. It should describe the general approach, organization and staffing required for the Services requested. If necessary, preliminary investigations, due diligence, and research shall be discussed in this section.

This section should include the following:

1. An implementation plan that describes in detail (i) the methods, including controls by which your firm or entity manages projects of the type sought by this RFP; (ii) methodology for soliciting and documenting views of internal and external stakeholders; (iii) and any other project management or



implementation strategies or techniques that the respondent intends to employ in carrying out the work.

2. Detailed description of efforts your firm or entity will undertake to achieve client satisfaction and to satisfy the requirements of the "Scope of Work" section.
3. Detailed project schedule, identifying all tasks and deliverables to be performed, durations for each task, and overall time of completion, including a complete transition plan. Include your plan to deal with fluctuation in service needs and any associated price adjustments.
4. Detailed description of specific tasks you will require from City staff. Explain what the respective roles of City staff and your staff would be to complete the tasks specified in the Scope of Work.
5. Proposers are encouraged to provide additional innovative and/or creative approaches for providing the service that will maximize efficient, cost-effective operations or increased performance capabilities. In addition, the City will consider proposals that offer alternative service delivery means and methods for the services desired.
6. Proposers are also requested to identify any City owned facilities or property which Proposer would propose to use or lease, purchase, or rent from the City in connection with the services to be performed, including information about the terms of any proposed lease, purchase or use of such equipment and facilities, and how this proposed structure affects the overall cost proposal to the City, if applicable.

#### **c. Company Information**

This section shall include contact person information, address and telephone number of the company main office and branch offices. Each Company shall identify itself as to the type of organizational entity (corporation, sole proprietorship, partnership, joint venture, etc.). Any supplemental information that Company believes may be pertinent to the selection process may be provided.

The Proposal shall identify any litigation, mediation, or arbitration, regarding the performance of any services similar to the Services, in which the Company has been involved in the past five (5) years. If the Services require a license or certification, the Proposal shall include any claims or disciplinary action taken against Company or any of Company's key personnel within the past five years.

#### **d. Company Personnel**



This section shall contain names, contact numbers and description of experience, including licenses and/or certifications, of all key personnel who would be assigned to perform the Services. Members of the Company's professional team (managers, contact person, etc.) should be identified by name, title, phone number, and description of the portion of work they will be assigned to perform under this Agreement. Also include major subcontractors (if any) and their degree of involvement in this program. If the Company is including any subcontractors, the Company shall identify how long the Company has worked with the subcontractor.

**e. Experience and References**

The Proposal must demonstrate that the Company, or its key personnel, has at least three (3) years' of experience under a legally registered business name, that provides services of a similar type and scope as described in the Scope of Services (Exhibit "B"). A Company shall not have filed for bankruptcy under any business name over the past five (5) years.

Company shall provide at least three (3) references of clients for whom services have been performed that are comparable in quality and scope to that specified in this RFP. The references shall include client names, addresses, telephone numbers and e-mail addresses of the clients for whom prior work was performed and include an explanation of the services provided along with project start and end dates.

**f. Evidence of Insurance**

In addition, the Company shall provide evidence of possession of insurance in the coverage and amounts listed in the Sample Agreement (Exhibit C).

City requires that licensees, lessees, and vendors have an *approved* Certificate of Insurance (not a declaration or policy) or proof of legal self-insurance on file with the City for the issuance of a permit or contract. Within ten (10) consecutive calendar days of award of contract, successful Proposer must furnish the City with the Certificates of Insurance proving coverage as specified in contract sample.

**g. Financial Capacity**

Provide the Proposer's latest audited financial statement or other pertinent information such as internal unaudited financial statements and financial references to allow the City to reasonably formulate a determination about the financial capacity of the Proposer. Describe any administrative proceedings, claims, lawsuits, or other exposures pending against the Proposer.

**h. Disclosure**

Please disclose any and all past or current business and personal relationships with any current Banning elected official, appointed official, City employee, or family member of any current Banning elected official, appointed official, or City employee. *Any past or current business relationship may not disqualify the firm from consideration*

**i. Price Proposal**

All Proposers are required to use the online rate form to submit pricing as specified for their proposal. Pricing instructions should be clearly defined to ensure fees proposed can be compared and evaluated. Additional pricing information can be submitted within your proposal. Proposals shall be valid for a minimum of 180 days following submission.

**j. Proposal Forms (Exhibit "A")**

**As a convenience to Proposers, the following is a list of the Proposal Forms (Exhibit "A"), enclosed with this RFP. All forms shall be filled out and submitted with, and as part of the proposal response:**

**1. Ex Parte Communications Certificate**

Proposers and Proposers' representatives should not communicate with the City Council members about this RFP. In addition, Proposers and Proposers' representatives should not communicate outside the procedures set forth in this RFP with an officer, employee or agent of the City, including any member of the evaluation panel, with the exception of the RFP Facilitator, regarding this RFP until after Contract Award. Proposers and their representatives are not prohibited, however, from making oral statements or presentations in public to one or more representatives of the City during a public meeting.

A "Proposer" or "Proposer's representative" includes all of the Proposer's employees, officers, directors, consultants and agents, any subcontractors or suppliers listed in the Proposer's proposal, and any individual or entity who has been requested by the Proposer to contact the City on the Proposer's behalf.

**2. Disqualifications Questionnaire**

Proposers shall complete and submit, under penalty of perjury, a standard form of questionnaire inquiring whether a Proposer, any officer of a proposer, or any employee of a Proposer who has a proprietary interest in the Proposer, has ever been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local government project because of a violation of law or safety regulation and if so, to explain the circumstances. A proposal may be rejected on the basis of a Proposer, any officer or employee of such Proposer, having been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local project because of a violation of law or a safety regulation.

**3. Disclosure of Government Positions**

In order to analyze possible conflicts that might prevent a Proposer from acting on behalf of the City, the City requires that all Proposers disclose in their proposals any positions that they hold as directors, officers, or employees of any governmental entity. Additional disclosure may be required prior to contract

award or during the term of the contract. Each Proposer shall disclose whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months.

#### **4. Price Proposal Form**

All proposals submitted shall have a stated dollar bid amount for providing the services outlined in the Scope of Services. All proposals shall include a full and complete breakdown of all the costs, and proposed fees including but not limited to hourly rates, reimbursable expenses and/or rates, mileage and/or travel cost, miscellaneous fees, etc., and include a Grand Total Amount to complete this project and fulfill the entire scope of services herein.

### **12. EXAMINATION OF RFP AND SITES OF WORK**

The Company shall carefully examine the RFP and all sites, if applicable, of the work contemplated. The submission of a Proposal shall be conclusive evidence that the Company has investigated and is satisfied as to the conditions to be encountered, as to the character, quality, and quantities of work to be performed and materials to be furnished, the difficulties to be encountered, and to the requirements of the Proposal, RFP, and other Contract Documents.

By submitting a Proposal, the Company hereby certifies that it has: examined the local conditions, read each and every clause of this RFP, included all costs necessary to complete the specified work in its proposed prices, and agrees that if it is awarded the Contract it will make no claim against the City based upon ignorance of local conditions or misunderstanding of any provision of the Contract. Should the conditions turn out otherwise than anticipated by it, the Company agrees to assume all risks incident thereto.

### **13. ADDENDA**

Unless otherwise specified, any addenda issued during the time of bidding must be acknowledged electronically via the City's Bidding Website, which will be made part of the proposal. Addenda notifications will be provided to those listed on the Electronic Prospective Bidder's List via email.

### **14. WITHDRAWAL OF PROPOSAL**

All proposals shall be firm offers and may not be withdrawn for a period of one hundred twenty (120) days following the deadline date for submission of proposals noted herein. Submitted Proposals may be withdrawn at any time prior to the submission deadline.

### **15. PUBLIC RECORDS**

All Proposals submitted in response to this RFP become the property of the City and pursuant to the Public Records Act (Gov. Code, § 6250 et seq.) are public records, and as such may be subject to public review at least 10 days before selection.

The Company must notify the City in advance of any proprietary or confidential materials contained in the Proposal and provide justification for not making such material public. The City shall have sole discretion to disclose or not disclose such material subject to any protective order that the Company may obtain. Note that under California law, price proposal to a public agency is not a trade secret.

Submission of a proposal shall indicate that, if Proposer requests that the City withhold from disclosure information identified as confidential, and the City complies with the Proposer's request, Proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless the City from and against all damages (including but not limited to attorney's fees that may be awarded to the party requesting the Proposer information), and pay any and all costs and expenses related to the withholding of Proposer information. Proposer shall not make a claim, sue, or maintain any legal action against the City or its directors, officers, employees, or agents concerning the disclosure, or withholding from disclosure, of any Proposer information. If Proposer does not request that the City withhold from disclosure information identified as confidential, the City shall have no obligation to withhold the information from disclosure and may release the information sought without any liability to the City.

The City reserves the right to make use of any information or idea contained in the Proposal. All materials, ideas and formats submitted in response to this RFP will become the property of the City upon receipt.

## **16. EVALUATION OF PROPOSALS**

The City reserves the right to amend, withdraw, and cancel this RFP. The City also reserves the right to reject all responses to this RFP at any time prior to agreement execution. Furthermore, the City reserves the right to request additional information about any and all Proposals, that in City's opinion, is necessary to assure that the Company's competence, number of qualified employees, business organization, experience, and financial resources are adequate to perform the Services.

All Proposals shall be reviewed to verify that the Company has met the minimum requirements as stated in this RFP. Proposals that have not followed the rules, do not meet minimum content and quality standards, and/or do not provide references will be rejected as non-responsive.

Responsive proposals will be evaluated on the basis of the following criteria:

- a. Qualifications (35%)
- b. Pricing (25%)
- c. Experience (Projects of similar size and scope) (20%)
- d. Professional References (10%)
- e. Approach and Methodology (10%)



**If needed, interviews will be scheduled during or after the week indicated in the “Schedule of Events” section.**

If needed, interviews will be conducted by the same members on the proposal evaluation panel. Dates, times, and a location will be coordinated at that time if interviews are deemed necessary after the evaluation of responsive proposals. If interviews are deemed necessary, candidates who have submitted the highest scoring proposals within a competitive range as determined by the City will be invited to participate in the interview process.

The selected Company shall then enter into exclusive negotiations with the City to formalize the Scope of Service and Compensation. Recommendation for award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Proposers unless an agreement is reached. If the City is unable to obtain a fair and reasonable price or cannot reach agreement regarding the terms for the Scope of Services, then the City will end negotiations with that Company and begin negotiations with the next Company which best meets the needs of the City, and so on until a City and the Company reach agreement.

The City intends to select the Company that offers the best value to the City based on the criteria outlined above.

#### **17. CONFLICT OF INTEREST**

The Proposer warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code sections 1090 et seq., or sections 87100 et seq., during the performance of services under any Agreement awarded. The Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of any Agreement awarded. Violation of this provision may result in any Agreement awarded being deemed void and unenforceable.

#### **18. REJECTION OF PROPOSALS**

The City may reject any/or all Proposals and may waive any immaterial deviation in a Proposal. The City’s waiver of an immaterial defect shall in no way modify this RFP or excuse the Company from full compliance with this RFP and/or the Contract Documents if awarded the Contract. Proposals that include terms and conditions other than City’s terms and conditions may be rejected as being non-responsive. The City may make investigations as deemed necessary to determine the ability of the Company to perform the work, and the Company shall furnish to the City all such information and data for this purpose as requested by the City. The City reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Company fails to satisfy the City that such Company is properly qualified to carry out the obligations of the Agreement and to complete the work described herein.

#### **19. PROTEST PROCEDURES**

Failure to comply with the rules set forth herein may result in rejection of the protest. Protests based upon restrictive specifications or alleged improprieties in the proposal procedure which are apparent or reasonably should have been discovered prior to receipt of proposals shall be filed in writing with the RFP Facilitator at least 10 calendar days prior to the deadline for receipt of proposals. The protest must clearly specify in writing the grounds and evidence on which the protest is based.

Protests based upon alleged improprieties that are not apparent or which could not reasonably have been discovered prior to submission date of the proposals, such as disputes over the staff recommendation for contract award, shall be submitted in writing to the RFP Facilitator, within forty-eight hours from receipt of the notice from the City advising of staff's recommendation for award of contract. The protest must clearly specify in writing the grounds and evidence on which the protest is based. The RFP Facilitator will respond to the protest in writing at least three days prior to the meeting at which staff's recommendation to the City Council will be considered. Should Proposer decide to appeal the response of the RFP Facilitator, and pursue its protest at the Council meeting, it will notify the RFP Facilitator of its intention at least two days prior to the scheduled meeting.

## 20. CONTRACT TERM

The initial term of the Agreement shall be a year from the date of execution with the option to extend for four (4) additional one-year terms not to exceed five (5) years based upon acceptable performance by the Company, acceptable fees and subject to the same terms and conditions of the Agreement.

Pricing is to remain firm for the initial contract term. Should the option to renew for additional years be exercised, City and Company may negotiate any and all price modifications.

## 21. CONTRACT DOCUMENTS

In submitting a Proposal, the Company agrees to enter into an Agreement with the City *without exceptions to the City's standard agreement*. The City's standard agreement is **non-negotiable**, and a copy of the standard agreement is attached hereto as Exhibit "C". **Any change to the standard agreement will deem the Proposal non-responsive.** In the event of a conflict exists between documents the following order of precedence shall apply:

- Agreement
- City of Banning's Request For Proposals
- Company's Response to the Request For Proposals

## 22. EXECUTION OF AGREEMENT

After contract award, the following shall be signed and returned to the City within fourteen (14) calendar days from the date the City mails, or by other means delivers said documents to the Company:



- Three (3) original copies of the Agreement in the form included herein, properly executed by the Company.
- Certificates of Insurance and Additional Insured Endorsement evidencing coverage as specified in the sample agreement.
- Confirmation of current business tax certificate.
- Bonds, if required.

In any event that day fourteen (14) of calendar days falls on Saturday, Sunday, a legal holiday for the State of California, or on days when the City is closed, the Contract Documents shall be delivered by the following working day.

No Agreement shall be binding upon the City until all documents are fully executed by the Company and the City.

### **23. FAILURE TO EXECUTE THE AGREEMENT**

Failure to execute the Agreement and furnish the required insurance and business tax certificate, within the required time period shall be just cause for the rescission of the award. If bonds are also required, failure to furnish sufficient bonds shall cause rescission of the award. If the successful Company refuses or fails to execute the Agreement, the City may award the Agreement to the next qualified Company.

### **24. CANCELLATION**

The City retains the right to cancel this RFP at any time, should it be deemed to be in the best interest of the City. No obligation either expressed or implied exists on the part of the City to make an award based on the submission of any proposals.

**EXHIBIT A**

**Proposal Forms (to be submitted with, and as part of proposal)**

---The rest of this page is intentionally left blank---

**EX PARTE COMMUNICATIONS CERTIFICATION**

Please indicate by signing below one of the following two statements. **Only sign one statement.**

I certify that Proposer and Proposer's representatives have not had any communication with a City Councilmember concerning this RFP at any time after the date advertised.

---

**OR**

I certify that Proposer or Proposer's representatives have communicated after the date this RFP was advertised with a City Councilmember concerning this RFP. A copy of all such communications is attached to this form for public distribution.

---

**DISQUALIFICATIONS QUESTIONNAIRE**

The Consultant shall complete the following questionnaire:

Has the Consultant, any officer of the Consultant, or any employee of the Consultant who has proprietary interest in the Consultant, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

Yes \_\_\_\_\_ No \_\_\_\_\_

If the answer is yes, explain the circumstances in the following space.

**DISCLOSURE OF GOVERNMENT POSITIONS**

Each Proposer shall disclose below whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months. List below or state "None."

**PRICE PROPOSAL FORM**

All proposals submitted shall have a stated dollar bid amount for providing the services outlined in the Scope of Services. All proposals shall include a full and complete breakdown of all the costs, and proposed fees including but not limited to hourly rates, reimbursable expenses and/or rates, mileage and/or travel cost, miscellaneous fees, etc., including the costs for the items listed below, and any additional costs which the proposer shall add to the table below, and submit as part of their proposal.

The City cannot guarantee the quantity of work required during the term of the contract. All City of Banning Contracts will be at a rate up to \$100.00 per acre for disking and moving. Hand work up to \$35.00 per hour per person. City approval needed on lots over \$400 in cost for weed abatement. Up to \$1.00 per picture, 6 picture maximum (3 “before” and 3 “after”). If dumping fees are necessary, Company will need to provide a receipt from the dump and the actual fees will be reimbursed. One dump receipt can be used for more than one lot as long as the charge is prorated fairly among the lots.

Type or Description of Service	Unit of Measurement	Unit Price
Disking & Moving	/Acre	\$
Hand Work	/Hour/Person	\$
Pictures	/Picture	\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**EXHIBIT B**  
**Scope of Services**

---The rest of this page is intentionally left blank---

## POLICE DEPARTMENT

## WEED ABATEMENT SERVICES

## Weed Control, Discing and Debris Removal

1. **BACKGROUND:** The City of Banning Code Enforcement Division may from time to time issue a notice of violation for violating city codes relating to unsafe and unhealthy overgrowth of vegetation in accordance with Banning Municipal Code Section 8.48.050 and City of Banning Ordinance No. 969. The property owner does not abate the condition as required; the City will cause the Contractor here to provide services necessary to abate the condition. Alternatively, the City retains ownership of several vacant lots and may require weed control, discing, and debris removal services. Weed abatement contractors are hired on an as-needs basis to clear lots in cases where residents have failed to do so.
2. **PURPOSE:** Provide Weed Abatement and Site Cleanup services on an as needed basis in situations when property owners have failed to maintain their property according to City codes. Citations may be issued for violations of City Codes relating to unsafe and unhealthy overgrowth of vegetation and/or rubbish/garbage/brush, if required by the City.
3. **MINIMUM QUALIFICATIONS:** All firms should have at least (3) years of verifiable experience in weed abatement. All firms must provide at least three (3) references from current clients. All firms must have the ability to maintain their equipment in good working order. All personnel must don industry appropriate personal protective equipment while performing the services herein on behalf and/or for the City.
4. **SCOPE OF WORK:** When directed by the City, the Contractor shall provide all labor, equipment, fuel, insurance, taxes and other items necessary to abate the condition of vegetation as specified herein. The work to be done shall consist of destroying weeds, wild grass, and poisonous or noxious plants and removing rubbish (including but not limited to scrap metals, disassembled parts of automobiles or machinery, furniture, mattresses, tires, concrete, asphalt, bricks or other construction or demolition materials, debris, litter, cardboard, metal cans, glass, cut brush, dead trees, tree limbs and similar materials, garbage, (including but not limited to animal matter including feces, fruit or vegetable matter) and trimming trees and brushes designated by the City Representative in accordance with the City of Banning Weed Abatement Standards, attached hereto.

Discovery of hazardous waste or hazardous materials shall be reported to the City Representative.

The City of Banning weed abatement standards shall be adhered to by all persons or companies performing weed abatement within the City of Banning:

- a. All weeds must be completely disced under or cut to a height not to exceed two (2) inches.
- b. Lots three (3) acres and under, shall be abated in their entirety. Refer to Exhibit "A", City of Banning Weed Abatement Standards attached hereto for reference.
- c. Lots over three (3) acres shall have a fifty (50) foot cross hatch dividing each acre. Refer to Exhibit "A", City of Banning Weed Abatement Standards attached hereto for reference.
- d. Weeds shall be abated to the back of curb, sidewalk, street paving edge of road, and around and up to fencing and poles.
- e. Weed abatement procedure shall not disrupt, alter or block any natural or manmade water way, stream, or drainage ditch. All of said water ways must be kept clean and free of all debris as described in 11C-18.
- f. Handwork will be required where tractors or other similar equipment have no access to meet requirements of items D and E above. Two person, Two hour Maximum on lots one acre or less. Any hand work that will take longer than a total of 2 hours on a lot one acre or less will need pre-approval. Three person, 4 hour Maximum on lots larger than one acre. Any hand work that will take longer than a total of 4 hours on a lot larger than one acre will need pre-approval.
- g. Dust Control – It shall be the Contractor's sole responsibility to comply with Federal, State and Local laws, Regulations and Ordinances, including but not limited to, South Coast Air Quality Management Division **RULE 403. FUGITIVE DUST**.
- h. The Contractor shall furnish all hand tools, power equipment and safety equipment necessary to accomplish the specified work.
- i. The Contractor will have portable water readily available and in sufficient quantity at all times for each hand crew member.
- j. Gas weed eaters with adequate supplies, parts for repairs and enough fuel for the entire day must be supplied for hand crews.
- k. Each hand crew must have one (1) gas powered weed eater for every two employees: for example, a four (4) person crew must be supplied with two (2) weed eaters, etc.
- l. A sufficient reserve of weed eaters shall be available to eliminate down time.
- m. Suitable flatbed hydraulic pump trucks or trailers with high sides for hauling are to be provided throughout the handwork operation and are to be operated and maintained at the expense of the Contractor.
- n. All trimmings and debris shall be disposed of at a properly licensed and regulated landfill or debris recycling facility at the Contractor's expense.
- o. The loading of materials removed from the lot is to be accomplished on the same day as cleaning is completed. No materials will be left on the lot for later pick up.

- p. The Contractor shall at all times have (1) person who shall be responsible for the conduct and supervision of hand crews.
  - q. Contractor shall at all times furnish the equipment and personnel needed to complete the required work in the most efficient manner.
  - r. The contractor shall obey all State and Federal laws and codes, all local ordinances and regulations and any other laws, codes, ordinances and regulations, which may apply. It is the responsibility of the Contractor to keep informed of these laws, codes, ordinances, and regulations and to keep informed of any changes to them.
  - s. All pictures must be time stamped and dated and display the APN. No hand written dates on photos. Before pictures must show the height of the weeds with a City of Banning approved weed measuring stick. Measuring stick must be at least 4 feet tall with a red line at the 2 foot mark. The red line must be put on by weed abatement officer.
5. **SCHEDULE:** All work shall be on an as needed basis as specified during the term of the contract. All firms should have the ability to complete assigned jobs within fourteen (14) days upon assignment. All work shall be started on site within 72 hours after request for service and continued diligently until completed. Failure to complete the work as specified for each site within fourteen (14) days may result in termination of the contract; unless the Contractor can show just cause for an extension. A workday is 7:00 AM to 5:00 PM.
- t. **QUANTITIES AND PRICING:** The City cannot guarantee the quantity of work required during the term of the contract. All City of Banning Contracts will be at a rate of \$100.00 per acre for disking and moving. Hand work \$35.00 per hour per person. City approval needed on lots over \$400 in cost for weed abatement. \$1.00 per picture , 6 picture maximum (3 “before” and 3 “after”). If dumping fees are necessary, you will need to provide a receipt from the dump and the actual fees will be reimbursed. One dump receipt can be used for more than one lot as long as the charge is prorated fairly among the lots.
- Prevailing Wage Rate Determination: SC-LML-2017-1**
6. **LOCATIONS:** Locations will vary within the City limits of Banning, CA.

**EXHIBIT C**  
**Sample Agreement**

---The rest of this page is intentionally left blank---

**PROFESSIONAL SERVICES AGREEMENT**

**By and Between**

**THE CITY OF BANNING**

**and**

**VENDOR NAME**



**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN  
THE CITY OF BANNING, CALIFORNIA  
AND  
VENDOR NAME**

THIS AGREEMENT FOR PROFESSIONAL SERVICES (herein "Agreement") is made and entered into this 22nd day of May, 2018 by and between the **City of Banning**, a municipal corporation ("City") and Vendor Name, a California corporation ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

**RECITALS**

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services for the Insert Type of Work to be Completed prepared in connection therewith, and as further defined and described particularly in Article 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Section 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1. SERVICES OF CONSULTANT**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder and which relate the Insert Type of Work to be Completed prepared in connection therewith. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and

professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

#### 1.2 Consultant's Proposal.

This Agreement shall include the Request for Proposal or Invitation for Bids ("Contract Documents") and the Scope of Service shall include the Consultant's scope of work or in Consultant's accepted bid proposal ("Accepted Bid") shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the Contract Documents, Accepted Bid, and/or Agreement, the terms of this Agreement shall govern.

#### 1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

#### 1.4 Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

#### 1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

#### 1.6 Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

#### 1.7 Further Responsibilities of Parties.

Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonable necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither Party shall be responsible for the service of the other.

#### 1.8 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to five percent (5%) of the Contract Sum or \$25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor.

#### 1.9 Facilities and Equipment.

Except as otherwise provided, Consultant shall, at its own cost and expense, provide all facilities and equipment necessary to perform the services required by this Agreement. City shall make available to Consultant only physical facilities such as desk, filing cabinets, and conference space ("City Facilities"), as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of City. The location, quality, and time of furnishing City Facilities shall be in the sole discretion of City. In no event shall City be required to furnish any facilities that may involve incurring any direct expense, including but not limited to computer, long distance telephone, network data, internet or other communication charges, vehicles and reproduction facilities.

#### 1.10 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

### ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

#### 2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed WRITTEN AMOUNT IN DOLLARS (\$0.00) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8.

#### 2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

#### 2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual sub-consultant expenses if an approved sub-consultant pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

#### 2.4 Invoices.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-consultant contracts. Sub-consultant charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.



City may independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Consultant to be paid within thirty (30) days of receipt of Consultant's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by the City of any invoice provided by the Consultant shall not constitute waiver of any rights or remedies provided herein or any applicable law.

## 2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

# ARTICLE 3. PERFORMANCE SCHEDULE

## 3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

## 3.2 Schedule of Performance.

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions of the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

## 3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

### 3.4 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, the term of this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) year from the date hereof, or extended in writing in advance by both parties, except as otherwise provided in the Schedule of Performance (Exhibit "D"). Maximum term and any subsequent amendment or modification shall not exceed five (5) years.

## ARTICLE 4. COORDINATION OF WORK

### 4.1 Representatives and Personnel of Consultant.

The following principals of Consultant (Principals) are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

_____	_____
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and sub-consultants, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and sub-consultants, if any, assigned to perform the services required under this Agreement, prior to and during any such performance. In the event that City, in its sole discretion, at any time during the term of this Agreement, desire to reassign any staff or sub-consultant of Consultant, Consultant shall, immediately upon reassign notice from City of such desire of City, reassign such person or persons.

### 4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.



#### 4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### 4.4 Independent Consultant.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent Consultant of City and shall remain at all times as to City a wholly independent Consultant with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venture or a member of any joint enterprise with Consultant.

#### 4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

### **ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS**

#### 5.1 Insurance Coverages.

Throughout the life of this Agreement, Consultant shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by the City

Manager or his/her designee at any time and in his/her sole discretion. The following policies of insurance are required:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of liability of not less than the following:

\$1,000,000 per occurrence for bodily injury and property damage

\$1,000,000 per occurrence for personal and advertising injury

\$2,000,000 aggregate for products and completed operations

\$2,000,000 general aggregate

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 Any Auto) with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

(iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

(v) PROFESSIONAL LIABILITY Professional Liability (Errors and Omissions) insurance appropriate to Consultant's profession, with limits of liability of \$1,000,000 per claim/occurrence and \$1,000,000 policy aggregate.

In the event Consultant purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

If this Agreement continues for more than three (3) years duration, or in the event the City Manager or his/her designee determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City Manager, or his/her designee.

Consultant shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Consultant shall also be responsible for payment of any self-insured retentions.

Any deductibles or self-insured retentions must be declared to, and approved by, the City Manager or his/her designee. At the option of the City Manager or his/her designee, either: (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to City, its Council members, officers, officials, employees and agents; or (ii) Consultant shall provide a financial guarantee, satisfactory to the City Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the City be responsible for the payment of any deductibles or self-insured retentions.

## 5.2 General Requirements.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Consultant shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Consultant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form. The General Liability (including ongoing and completed operations) and Automobile Liability shall name City and its officers, officials, employees, agents and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Consultant's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to the City and its officers, officials, employees, agents and volunteers. The Workers' Compensation insurance policy shall contain a waiver of subrogation as to City and its officers, officials, employees, agents and volunteers. Should Consultant maintain insurance with broader coverage and/or limits of liability greater than those shown above, City requires and shall be entitled to the broader coverage and/or the higher limits of liability maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Consultant.
2. Insurance must be maintained and evidence of insurance must be provided for at least three years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a three-year discovery period.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by Consultant, Consultant must purchase extended reporting coverage for a minimum of three years following the expiration or termination of the Agreement.

4. A copy of the claims reporting requirements must be submitted to City for review.

5. These requirements shall survive expiration or termination of the Agreement.

Consultant shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the City Manager or his/her designee prior to City's execution of the Agreement and before work commences.

If at any time during the life of this Agreement or any extension, Consultant or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to Consultant shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City hereunder shall in any way relieve Consultant of its responsibilities under this Agreement.

Upon request of City, Consultant shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

The fact that insurance is obtained by Consultant shall not be deemed to release or diminish the liability of Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City and its officers, officials, employees, agents and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Consultant, its principals, officers, employees, agents, persons under the supervision of Consultant, vendors, suppliers, invitees, subcontractors, or anyone employed directly or indirectly by any of them.

If Consultant should subcontract all or any portion of the services to be performed under this Agreement, Consultant shall require each subcontractor to provide insurance protection in favor of City and its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Consultant and City prior to the commencement of any work by the subcontractor.



### 5.3 Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable, or arising from their reckless or willful misconduct, or negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of such claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

## ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

### 6.1 Records.

Consultant shall keep, and require sub-consultants to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

### 6.2 Reports.

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### 6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Consultant, its employees, sub-consultants and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, revise or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. All sub-consultants shall provide for assignment to City of any documents or materials prepared by them, and in the event



Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

#### 6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or sub-consultants, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or sub-consultant of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or sub-consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

### **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

#### 7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

## 7.2 Disputes; Default.

In the event that City determines Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

## 7.3 Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any payment amount of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

## 7.4 Waiver.

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

## 7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or

different times, of any other rights or remedies for the same default or any other default by the other Party.

#### 7.6 Legal Action.

In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant must file a statutory claim pursuant to Government Code Sections 905 et seq. and 910 et seq., in order to pursue a legal action against City under this Agreement.

#### 7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Consultant and its sureties shall be liable for and shall pay to the City the sum of Not Applicable (\$0.00) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Consultant any accrued liquidated damages.

#### 7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Agreement except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Agreement at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating Party need not provide the non-terminating Party with the opportunity to cure pursuant to Section 7.2.

#### 7.9 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and

prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

#### 7.10 Attorneys' Fees.

If either Party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition the Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

### **ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

#### 8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

#### 8.2 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or sub-consultant without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement within the scope of Government Code section 1090, nor shall any such officer or employee make, participate in making, or use his or her official position to influence, any City decision relating to the Agreement which has a material financial effect on his or her financial interests or the financial interests of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.



### 8.3 Covenant Against Discrimination.

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry, or other protected class.

### 8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

## **ARTICLE 9. MISCELLANEOUS PROVISIONS**

### 9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either Party desires or is required to give to the other Party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

### 9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the Parties. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Corporate Authority.

The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

**[SIGNATURES ON FOLLOWING PAGE]**



**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF BANNING

CONSULTANT

<p>_____  Rochelle Clayton, Interim City Manager</p>	By:	<p>_____  NAME:  TITLE:</p>
--	-----	-------------------------------------

	By:	<p>_____  NAME:  TITLE:</p>
--	-----	-------------------------------------

ATTEST:

<p>_____  Sonja De La Fuente, Deputy City Clerk</p>	<p>_____  Tax ID No.</p>
---	------------------------------

APPROVED AS TO FORM:  
Richards, Watson, Gershon

\_\_\_\_\_  
Kevin G. Ennis, Esq., City Attorney

**Two signatures are required if a corporation**

**NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On \_\_\_\_\_, 20\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

#### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	_____
<input type="checkbox"/>	CORPORATE OFFICER	_____
<input type="checkbox"/>	<div style="display: flex; align-items: center;"> <div style="margin-right: 10px;">TITLE(S)</div> <div> <input type="checkbox"/> LIMITED  <input type="checkbox"/> GENERAL </div> </div>	TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/>	PARTNER(S)	_____
<input type="checkbox"/>	ATTORNEY-IN-FACT	_____
<input type="checkbox"/>	TRUSTEE(S)	NUMBER OF PAGES
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/>	OTHER _____	_____
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES))		DATE OF DOCUMENT
_____		_____
_____		SIGNER(S) OTHER THAN NAMED ABOVE

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

- I. Consultant will perform the following services in connection with providing Insert Type of Work to be Completed prepared in connection therewith:**
  - A.
  - B.
  - C.
- II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:**
  - A.
  - B.
  - C.
- III. In addition to the requirements of Parts I and II of this Scope of Services, during the performance of the services, Consultant will keep the City apprised through periodic status reports regarding the performance of the services under this Agreement by the following means:**
  - A.
  - B.
  - C.
- IV. All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.**
- V. Consultant will utilize the following personnel to accomplish the services:**
  - A.
  - B.
  - C.

**EXHIBIT "B"**  
**SPECIAL REQUIREMENTS**  
**(Superseding Contract Boilerplate)**

**None**

**EXHIBIT "C"**  
**SCHEDULE OF COMPENSATION**

**I. Consultant shall perform the following tasks ("Tasks") at the following rates**

<b>TASK</b>	<b>DESCRIPTION</b>	<b>SUB-BUDGET</b>
1.		\$0.00
2.		\$0.00
3.		\$0.00
4.		\$0.00
5.		\$0.00
	<b>TOTAL</b>	<b>\$0.00</b>

**II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.**

**III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub-budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.**

**IV. The City will compensate Consultant for the services performed upon submission of a valid invoice. Each invoice is to include:**

- A.** Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B.** Line items for all materials and equipment properly charged to the services.
- C.** Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D.** Line items for all approved sub-consultant labor, supplies, equipment, materials, and travel properly charged to the services.

**V. The total compensation for services shall not exceed \$0.00 as provided in Section 2.1 of this Agreement.**

**VI. The Consultant's billing rates for all personnel are attached as Exhibit C-1.**

EXHIBIT "C-1"  
CONSULTANT'S BILLING RATE AND TASK SCHEDULE



**EXHIBIT "D"**  
**SCHEDULE OF PERFORMANCE**

- I. Consultant shall perform all services timely in accordance with the schedule to be developed by Consultant and subject to the written approval of the Contract Officer. Consultant will provide a written proposal within one week of the City's request for services, unless otherwise agreed to by the Contract Officer.**
- II. Consultant shall deliver the following tangible work products to the City by the following dates.**
  - A. Proposed Project Schedule – Attached as Exhibit D-1.**
- III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

EXHIBIT "D-1"  
PROPOSED PROJECT SCHEDULE

# ***ATTACHMENT 3***

**(PlanetBids Publication and List of Weed Abatement Contractors Solicited)**

City of Banning

WEED ABATEMENT SERVICES (19-023), bidding on February 6, 2019 2:00 PM (Pacific)

Printed 05/13/2019

**Bid Detail****Bid Detail**

<b>Project Title</b>	WEED ABATEMENT SERVICES
<b>Invitation No.</b>	19-023
<b>Bid Posting Date</b>	January 3, 2019 3:52 PM (Pacific)
<b>Project Stage</b>	Closed
<b>Bid Due Date</b>	February 6, 2019 2:00 PM (Pacific)
<b>Response Format</b>	Electronic only
<b>Project Type</b>	RFP (Request For Proposal)
<b>Response Types</b>	Response File
<b>Type of Award</b>	Lump Sum
<b>Categories</b>	947096 - MISCELLANEOUS SERVICES: WEED ABATEMENT
<b>License Requirements</b>	
<b>Preferences</b>	
<b>Restriction Type</b>	None
<b>Department</b>	Police Department
<b>Address</b>	99 E. Ramsey St., Banning, California
<b>County</b>	Riverside
<b>Bid Valid</b>	
<b>Liquidated Damages</b>	
<b>Estimated Bid Value</b>	
<b>Start/Delivery Date</b>	Based upon PO/Contract approval
<b>Project Duration</b>	One Year w/Renewal Options

**Bid Bond Information**

<b>Bid</b>	0.0%
<b>Performance</b>	0.0%
<b>Payment</b>	0.0%

**Pre-Bid Meeting Information**

<b>Pre-Bid Meeting</b>	Yes - Not Mandatory
<b>Pre-Bid Meeting Date</b>	January 24, 2019 1:00 PM (Pacific)
<b>Pre-Bid Meeting Location</b>	City Hall in the Large Conference Room located at 99 E. Ramsey St. Banning CA 92220

**Online Q&A**

<b>Online Q&amp;A</b>	Yes
<b>Q&amp;A Cutoff Date</b>	January 25, 2019 3:00 PM (Pacific)

**Contact Information**

<b>Contact Info</b>	Shiloh Rogers - 951-922-3121
<b>Bids to</b>	
<b>Owner's Agent</b>	

**Description**

<b>Scope of Services</b>	The City is seeking weed abatement services. The selected Company shall provide the services required in Exhibit B, Scope of Services, attached hereto and incorporated herein.
--------------------------	---

**Other Details**

<b>Notes</b>	E-Bids are sealed and cannot be viewed by the City until the closing date and time. If you need to withdraw your bid, you may do so any time before the bid deadline, by going back into the system and selecting "Withdraw".
--------------	---

**Local Programs & Policies****Special Notices**

WEED ABATEMENT SERVICES (19-023), bidding on February 6, 2019 2:00 PM (Pacific)

Printed 05/13/2019

**Prospective Bidders**

Vendor	Contact	Vendor Type	Pre-Bid	Status
<b>Lawnscape Systems</b> 5215 State St Montclair, CA 91763 United States	<b>Contact:</b> Carl Clifton <b>Phone:</b> 909-627-2000 <b>Fax:</b> <b>Email:</b> carl@lawnscape.com			Bidder
<b>Shay Enterprise</b> 1789 Tavern Ln Tacoma, WA 98402 United States	<b>Contact:</b> Tamara Shay <b>Phone:</b> 253-791-8388 <b>Fax:</b> <b>Email:</b> tshayenterprise@gmail.com			Bidder
<b>Corner Keystone Construction Corporation</b> 340 S Lemon Ave Ste. 5210 Walnut, CA 91789 United States	<b>Contact:</b> Melmie Lincod <b>Phone:</b> 844-252-2677 ext. 9 <b>Fax:</b> 844-252-2677 <b>Email:</b> bids@cornerkeystone.com	DGS,CABE,C ADIR		Non-Bidder, no communicati ons
<b>DeGuire Weed Abatement, Inc.</b> 20895 Warren Rd Perris, CA 92570 United States	<b>Contact:</b> Matthew Swoboda <b>Phone:</b> 951-741-4790 <b>Fax:</b> 951-934-6711 <b>Email:</b> matt@dgweeds.com			Bidder
<b>Pestmaster Services, Inc.</b> 9716 S Virginia St., Ste. E Reno, CA 89511 United States	<b>Contact:</b> Jason Virden <b>Phone:</b> 775-858-7378 <b>Fax:</b> <b>Email:</b> contracts@pestmaster.com			Bidder
<b>PV Inc</b> 4622 Cedar Avenue Wilmington, NC 28403 United States	<b>Contact:</b> KIM JONES <b>Phone:</b> 800-746-9554 <b>Fax:</b> <b>Email:</b> shanti@gmail.com			Bidder
<b>Summitt Forests, Inc.</b> 2305 Ashland St Ste C PMB 432 Ashland, OR 97520 United States	<b>Contact:</b> Scott Nelson <b>Phone:</b> 541-535-8920 <b>Fax:</b> <b>Email:</b> summittforests@gmail.com			Bidder
<b>North American Procurement Council</b> PO Box 40445 Grand Junction, CO 81504 United States	<b>Contact:</b> Lyra De Asis <b>Phone:</b> 302-450-1923 <b>Fax:</b> <b>Email:</b> lyra@napc.me			Bidder
<b>Habitat Restoration Sciences, Inc.</b> 1217 Distribution Way Vista, CA 92081 United States	<b>Contact:</b> Cindy Thompson <b>Phone:</b> 760-479-4210 <b>Fax:</b> <b>Email:</b> HRSEstimating@hrs.dudek.com	CADIR		Bidder
<b>West SWPPP Services</b> p.o. box 7683 Redlands, CA 92375 United States	<b>Contact:</b> James Huss jr <b>Phone:</b> 909-478-4321 <b>Fax:</b> <b>Email:</b> jdhussjr65@gmail.com			Bidder
<b>Natures Image</b> 20361 Hermana Cir Lake Forest, CA 92630 United States	<b>Contact:</b> Rory Malone <b>Phone:</b> 949-689-6989 <b>Fax:</b> <b>Email:</b> rmalone@naturesimage.net			Bidder
<b>Blue Tent Farms LLC</b> 859 Washington Street 259 Red Bluff, CA 96080 United States	<b>Contact:</b> Tim Arrowsmith <b>Phone:</b> 503-200-2929 <b>Fax:</b> 866-499-0524 <b>Email:</b> bluetentfarms@gmx.com	DGS,CABE		Bidder
<b>Onvia, Inc.</b> 509 Olive Way Seattle, WA 98101 United States	<b>Contact:</b> Source Management <b>Phone:</b> 206-373-9500 <b>Fax:</b> <b>Email:</b> sourcemanagement2@onvia.com			Bidder
<b>JP Nelson &amp; Sons Construction Inc</b> 1577 W. Jacinto View Rd. Banning, CA 92220 United States	<b>Contact:</b> JP Nelson <b>Phone:</b> 951-836-0633 <b>Fax:</b> 951-849-6030 <b>Email:</b> jpcanhunt@outlook.com			Bidder
<b>Animal Pest Management Services, Inc.</b> 13655 Redwood Court Chino, CA 91710 United States	<b>Contact:</b> Dan Fox <b>Phone:</b> 800-344-6567 <b>Fax:</b> 909-591-0941 <b>Email:</b> info@animalpest.com			Non-Bidder, no communicati ons
<b>AGC San Diego Chapter</b> 6212 Ferris Sq. San Diego, CA 92121 United States	<b>Contact:</b> Plan Room <b>Phone:</b> 858-558-7444 <b>Fax:</b> <b>Email:</b> planroom@agcsd.org			Bidder

WEED ABATEMENT SERVICES (19-023), bidding on February 6, 2019 2:00 PM (Pacific)

Printed 05/13/2019

**Prospective Bidders**

**Specialty Mowing Services, Inc.**  
2910 Rainbow Glen Rd.  
Fallbrook, CA 92028  
United States

**Contact:** Martti Silvola  
**Phone:** 760-728-1591  
**Fax:**  
**Email:** martti@specialmowing.com

CADIR

Bidder

**Lotus USA Inc**  
27125 SierraHwy  
#326-A  
Santa Clarita, CA 91351  
United States

**Contact:** Siva Prasad Yalamanchi  
**Phone:** 213-298-7100  
**Fax:**  
**Email:** sivaprasad@lotususa.com

DGS,MBE,WB  
E

Bidder

**Environmental Klean-Up**  
19069 Van Buren Blvd.  
Suite 114-385  
Riverside, CA 92508  
United States

**Contact:** Beverley J. Gann  
**Phone:** 951-685-5314  
**Fax:** 951-681-5559  
**Email:** envirokleanup@sbcglobal.net

CADIR,WBE

Bidder

**bid america**  
41085 Elm Street  
Murrieta, CA 92562  
United States

**Contact:** Abdul  
**Phone:** 951-677-4819  
**Fax:**  
**Email:** planroom@bidamerica.com

Bidder

**CBS**  
6265 Highway 9  
Felton, CA 95018  
United States

**Contact:** Sherri Schweickert  
**Phone:** 888-786-9450  
**Fax:** 209-772-3573  
**Email:** sherri@constructionbidsources.com

Non-Bidder,  
receive  
communicati  
ons

**Brian Smith Development**  
30400 Norden Dr  
Homeland, CA 92548  
United States

**Contact:** Adrienne Smith  
**Phone:** 951-375-1188  
**Fax:** 951-344-8313  
**Email:** a1weedabatement@yahoo.com

CADIR

Bidder

**Urban Habitat Environmental Landscapes**  
P.O. Box 1177  
La Quinta, CA 92247  
United States

**Contact:** Joe Ular  
**Phone:** 760-345-1101  
**Fax:**  
**Email:** Brett@MyUrbanHabitat.com

CABE,DBE,CA  
DIR

Bidder



# ***ATTACHMENT 4***

(Proposals)



P.O. Box 7683 • Redlands, CA 92375  
Phone 909-478-4321

Contact during the RFP review process

James Huss jr

Owner/Operator

#### Cover Letter

P.O. Box 7683

Redlands, Ca 92375

909-478-4321 Email: jdhussjr65@gmail.com

West SWPPP Services has the intent to perform the services and confirm that all elements of the RFP have been reviewed and understood. And is willing to enter into a contract under the terms and conditions prescribed by this RFP and in the Sample Agreement

West SWPPP Services has been in business for 11 years and is the largest and most experienced company in this field. we have been contracted with Banning for the last 4 years excluding 2018. Our customer are

City of Redlands Quality of life City (Airport weed Abatement), City of Redlands Code enforcement, (Homeless clean up) City of Redlands field services ( Weed Abatement) 5 yrs

City of Loma Linda fire department (Weed Abatement) 6 yrs

City of Beaumont Code Enforcement ( Weed Abatement ) 2 yrs

Cal Fire San bernardino, Ca (Water Tender 8 yrs), Weed Abatement 8 yrs

200 various customers from Fontana, colton, loma linda, redlands, beaumont, Temecula, Highland, Bloomington Etc

#### Our equipment :

2016 Massey Ferguson 4610 Tractor 100 hp

2018 massey Ferguson 2607H loader grapple tractor 140 hp

2013 John Deere 8960 Tractor 600 hp

Variety of attachments for disking such as 35 ft harrow disk, 28 ft disk offset, 14 ft offset disk, 12 ft offset disk 10 ft 3 point offset disk, 12 ft batwing mower, 8 ft 3 point mower, 6 ft 3 point mower

Various hand equipment weed eaters, hand pruning equipment, Chainsaws, blowers, water trailer for dust control, and dump trailers etc

West employs 6 men , 4 working full time 2 working part time



P.O. Box 7683 • Redlands, CA 92375  
Phone 909-478-4321

### Statement of Understanding and Approach

1. The methods, including controls by which West SWPPP manages projects of the type sought by this RFP, are that we follow:
 

The men find the lot described to us by the city by the APN number and scope of work described for the day. Pending weather conditions either hot or dry we then decide to either mow or disk, if the weather is too dry we execute an approach of fire danger, we hold a meeting on fire approach such as where is the fire extinguishers, shovels, then observe the wind and the approach of the fire if it should occur. At that point we decide on either mowing property or disking property. On decision of the tasks we then call code enforcement and let them know when and where we will be working for the day just in case of an emergency should occur. If we think the lot should be over \$400.00 we would then let them know at that time what lot.

These standards are followed each and every day.



P.O. Box 7683 • Redlands, CA 92375  
Phone 909-478-4321

#### Professional References

City Of Redlands City development Mike Foster 909-329-1114 [mfooster@cityofredlands.org](mailto:mfooster@cityofredlands.org)

City of Redlands Quality of life ( Airport ) Will Hamilton 909-798-7655 [whamilton@cityofredlands.org](mailto:whamilton@cityofredlands.org)

City of Redlands Code enforcement Jeanette Gurra 909-335-4737 [jguerra@cityofredlands.org](mailto:jguerra@cityofredlands.org)

City of Banning Art Chacon Code Enforcement 951-282-5502 [achacon@ci.banning.ca.us](mailto:achacon@ci.banning.ca.us)

City of Banning Debbie Shubin Code Enforcement 951-492-6557 [dshubin@ci.banning.ca.us](mailto:dshubin@ci.banning.ca.us)

City of Loma linda Tom Ingalls Fire Code Enforcement 909-478-4268 [tingalls@lomalinda-ca.gov](mailto:tingalls@lomalinda-ca.gov)

City of Loma Linda Jim Shay ( retired ) Code Enforcement 909-528-8356 [jshea@lomalinda-ca.gov](mailto:jshea@lomalinda-ca.gov)

City of Beaumont Kelly Mc Carthy Code Enforcement 951-377-1797 [kmccarthy@beaumontpd.org](mailto:kmccarthy@beaumontpd.org)

City of Beaumont Michale Almendinger Code Enforcement 951-377 5011

Ardent mills ( customer) Gabe Lopez 760-508-7380 [gabe.lopez@ardentmills.co](mailto:gabe.lopez@ardentmills.co)

Haven Properties (customer) Maggie 415-331-3030 [havenproperties@mac.com](mailto:havenproperties@mac.com)



P.O. Box 7683 • Redlands, CA 92375  
Phone 909-478-4321

### Financial Capacity

Samuel M. Willner, Enrolled Agent Enrollment Number 53157 Enrollment expires December 31, 2019

### West SWPPP Services

Profit & Loss Statement January 1, 2017 to July 31, 2018

#### Revenues:

##### Revenue from Operations

328,665

#### Total Revenue:

328,665

#### Expenses:

Depreciation (Est to date) Fuel / Equipment Insurance Interest Labor/Contractors

Maintenance & Repairs Rent Utilities Weed Abatement materials

24,486

6,573 13,500

5,856 73,990

7,522 18,200

7,390 67 134

#### Total Expenses:

224,651

Income (loss):

104,014

I have assembled a consolidated Profit and Loss Statement of West, Corp., a corporation, as of August 15, 2018. The financial statement is the responsibility of the corporation. My responsibility is to express an opinion on the financial **statement based** on my audit.

I have conducted my audit according to standards as established by accounting principles generally accepted in the United States of America. Those standards require that I plan and perform this audit to obtain reasonable assurance about **whether the financial statements** are free of material misstatements. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used, as well as evaluating the overall financial **statement presentation**. I believe that this audit provides a reasonable basis for my opinion.

In my opinion, this financial statement presents fairly, in all material respects, the financial position of the abatement business of West SWPPP SERVICES, as of August 15, 2018, in conformity with accounting principles generally accepted in the United States of America.

Samuel M. Willner, Enrolled Agent Enrollment Number 53157 Enrollment expires December 31, 2019

### **West SWPPP SERVICES**

Balance Sheet Monday, July 31, 2018

49,959 12,248

#### **Current Assets:**

**Cash** Accounts Receivable Current Assets

Inventory Fixed Assets:

Equipment

Less Depreciation

62,207 5,029

171,400 24,486

146,914

**TOTAL ASSETS:**

214,150



**Liabilities:** Current Liabilities:

Accounts Payable Long-Term Liabilities:

Loans/Notes TOTAL LIABILITIES:

33,135

77,00

110,136

Owner's Equity:

104,014

TOTAL LIABILITIES and OWNER'S EQUITY

214,150



P.O. Box 7683 • Redlands, CA 92375  
Phone 909-478-4321

#### PRICE PROPOSAL

Disking & Mowing	100.00 per Acre
Hand Work	35.00 Hour per Person
Pictures	1.00 per Picture

City approval needed on lots over \$400 in cost for weed abatement

Proposals submitted has a stated dollar bid amount for providing the services outlined in the Scope of Services. Proposals includes a full and complete breakdown of all the costs, and proposed fees including but not limited to hourly rates, cost, miscellaneous fees, etc

The quantity of work required during the term of the contract. Rate of \$100.00 per acre for **Disking and Mowing**

**Hand work** \$35.00 per hour per person.

**City approval** needed on lots over \$400 in cost for weed abatement. Up to \$1.00 per **Picture**, 6 picture maximum (3 "before" and 3 "after"). If **dumping fees** are necessary, West SWPPP will provide a receipt from the dump and the actual fees will be reimbursed by the city of Banning.



P.O. Box 7683 • Redlands, CA 92375  
Phone 909-478-4321

#### EX PARTE COMMUNICATIONS CERTIFICATION

Please indicate by signing below one of the following two statements. **Only sign one statement.**  
I certify that Proposer and Proposer's representatives have not had any communication with a City Councilmember concerning this RFP at any time after the date advertised.

**OR**

I certify that Proposer or Proposer's representatives have communicated after the date this RFP was advertised with a City Councilmember concerning this RFP. A copy of all such communications is attached to this form for public distribution.

#### DISQUALIFICATIONS QUESTIONNAIRE

The Consultant shall complete the following questionnaire:

Has the Consultant, any officer of the Consultant, or any employee of the Consultant who has proprietary interest in the Consultant, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

Yes ☐ No ☒

If the answer is yes, explain the circumstances in the following space

#### DISCLOSURE OF GOVERNMENT POSITIONS

Each Proposer shall disclose below whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months. List below or state "None."

**None**



WESTSWP-01

BELLER

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/11/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 0E63493

Orr & Associates Insurance Services  
28780 Single Oak Dr  
Ste 255  
Temecula, CA 92590

CONTACT

NAME

PHONE (A/C No. Ex): (951) 506-5859

FAX

(A/C No.) (800) 474-3003

E-MAIL

ADDRESS service@orrassoc.com

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A Amtrust International Underwriter Limited AA-1788074 057399

INSURER B

INSURER C

INSURER D

INSURER E

INSURER F

INSURED

West SWPPP Services  
PO Box 7683  
Redlands, CA 92375

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSUR LTS	TYPE OF INSURANCE	ADDITIONAL INSURANCE RVD	POLICY NUMBER	POLICY EFF. (MM/DD/YYYY)	POLICY EXP. (MM/DD/YYYY)	LIMITS
A	X					
	COMMERCIAL GENERAL LIABILITY					
	CLAIMS MADE	X	DOCU			
			XN108545300	12/10/2018	12/10/2019	EACH OCCURRENCE \$ 1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
						MED EXP (Any one person) \$ 5,000
						PERSONAL & ADV INJURY \$ 1,000,000
						GENERAL AGGREGATE \$ 2,000,000
						PRODUCTS COMP/OP AGG \$ 2,000,000
						OTHER \$
	AUTOMOBILE LIABILITY					
	ANY AUTO OWNED		SCHEDULED AUTOS			COMBINED SINGLE LIMIT (Ea accident) \$
	AUTOS ONLY					BODILY INJURY (Per person) \$
	HIRED AUTOS ONLY		NON-OWNED AUTOS ONLY			BODILY INJURY (Per accident) \$
						PROPERTY DAMAGE (Per accident) \$
						\$
	UMBRELLA LIAB		DOCU			EACH OCCURRENCE \$
	EXCESS LIAB		CLAIMS MADE			AGGREGATE \$
	(ED)		RETENTION \$			\$
	WORKERS COMPENSATION AND EMPLOYERS LIABILITY					PER STATUTE OTHER
	ANY PERSONS TO WHOM THE ABOVE (IVE OFFICERS/MEMBER EXCLUDED) (Mandatory in MI)		Y/N			E.L. EACH ACCIDENT \$
	EYES, OR OTHER UNDER DESCRIPTION OF OPERATIONS below		N/A			E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Evidence of Coverage

## CERTIFICATE HOLDER

## CANCELLATION

Evidence of Coverage

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Lori Schavone*

ACORD 25 (2018/03)

© 1988-2015 ACORD CORPORATION. All rights reserved.

The ACORD name and logo are registered marks of ACORD



# ENVIRONMENTAL KLEAN-UP SERVICES INC.

Contractors State License #1008604  
19069 Van Buren Blvd., Suite 114-PMB Riverside, CA 92508  
■ Tel (951) 685-5314 ■ Fax (951) 681-5559  
e-mail: [envirokleanup@sbcglobal.net](mailto:envirokleanup@sbcglobal.net)

## LETTER OF INTRODUCTION

I would like to take this opportunity to introduce our Company, Environmental Kleanup Services, Inc., for over fifty years we had varied and extensive experience in building and facility decontamination, environmental cleaning and demolition services, weed abatement and general clean-up.

As a woman owned general environmental contracting company, we specialize in commercial, industrial and institutional facilities. Our Environmental growth has increased significantly, and our future expectations are high.

Working with our in-house staff and a select group of consulting professionals, we at Environmental Kleanup Services, Inc. can combine design, engineering, management and environmental experience services within a total Turn-Key Environmental and Demolition Construction Contract.

Our Environmental capabilities provide our clients with single-source support from preliminary project planning to construction to on-going building maintenance.

This full approach provides our customers with the best value available, regardless of the size or scope of their project.

Depend on our experience with your Environmental and/or Demolition projects, specifically with regards to site plan approval process, and relations with the local, state and federal authorities will be an invaluable asset in expediting your project.

All of us at Environmental Kleanup Services, Inc. thank you for your business, trust, and confidence over the past 40 years. We look forward to serving you in the future and invite you to call any one of us to discuss your Environmental and Demolition needs.

Sincerely,

***Beverley J. Gann***

Beverley J. Gann  
CEO/Owner

## TABLE OF CONTENTS

- I. COVER LETTER
- II. STATEMENT OF EXPERIENCE
- III. CONTACT INFORMATION
- IV. STATEMENT OF UNDERSTANDING & APPROACH
- V. FIRE HAZARD, BRUSH, WEED ABATEMENT SERVICES
- VI. SAFETY TRAINING PLAN
- VII. CLIENT REFERENCE INFORMATION
- VIII. INSURANCE INFORMATION
- IX. MANAGEMENT TEAM
- X. STATEMENT OF QUALIFICATIONS
  - I. BEVERLEY J. GANN
  - II. AURELIANO LOPEZ
- XI. PROFIT AND LOSS STATEMENT
- XII. PRICE BID PROPOSAL



**COVER LETTER**



# ENVIRONMENTAL KLEAN-UP SERVICES INC.

Contractors State License # 1008604 DOSH # 595  
19069 Van Buren Blvd., Suite 114-PMB 385, Riverside, CA 92508  
■ Tel (951) 685-5314 ■ Fax (951) 681-5559  
E-Mail: [envirokleanup@sbcglobal.net](mailto:envirokleanup@sbcglobal.net)



FEBRUARY 6, 2019

**CITY OF BANNING**  
POLICE DEPARTMENT  
125 EAST RAMSET STREET  
BANNING, CA 92220

## **REQUEST FOR PROPOSAL FOR PROFESSIONAL SERVICES FOR WEED ABATEMENT SERVICES RFP NO. 19-023**

Environmental Kleanup Services is a responsible and dependable weed and nuisance abatement contractor with a full understanding of the requirements including the scope of services the City of Banning and The Police Department are requesting to be included in the RFP No. 19-023, weed abatement contract services.

We have reviewed and understand the terms and conditions of the sample agreement enclosed in the request for proposal documents and look forward to meeting all your goals and expectations for a successful weed abatement season.

Should you have any questions, please don't hesitate to contact Beverley J. Gann at (951) 685-5314

Sincerely,

Beverley J. Gann  
Environmental Kleanup Services, Inc.  
Environmental Klean-Up

**STATEMENT OF EXPERIENCE**



# ENVIRONMENTAL KLEAN-UP SERVICES INC.

Contractors State License # 1008604  
19069 Van Buren Blvd., Suite 114-PMB 385, Riverside, CA 92508  
Tel (951) 685-5314 ■ Fax (951) 681-5559  
E-Mail: [envirokleanup@sbcglobal.net](mailto:envirokleanup@sbcglobal.net)

## STATEMENT OF EXPERIENCE

### CAPABLE OF SERVICES

Environmental Kleanup Services, Inc. can perform the scope of contracted work in its entirety with our years of experience and knowledge of the fire hazard-weed abatement we have become well equipped to maintain equipment, staff and on-site supervision thru-out the duration of our projects no matter the size from small to large homeless camps.

Sincerely,

A handwritten signature in dark ink, appearing to read "Beverley J. Gann".

Beverley J. Gann

Environmental Kleanup Services, Inc.

February 06, 2019

**CONTACT INFORMATION**



# ENVIRONMENTAL

## KLEAN-UP SERVICES INC.

**ENVIRONMENTAL KLEANUP SERVICES, INC.**

**CONTACT US**

**FIRM NAME**

Environmental Kleanup Services, Inc.  
Environmental Klean-Up

**MAILING ADDRESS**

19069 Van Buren Blvd.  
Suite 114- PMB 385  
Riverside, CA 92508

**COURIER ADDRESS**

17453 White Street  
Riverside, CA 92508  
SAME AS ABOVE-MAILING

**TELEPHONE/FAX/E-MAIL**

Telephone: (951) 685-5314  
(951) 520-2617  
Fax: (951) 681-5559  
E-Mail: [envirokleanup@sbcglobal.net](mailto:envirokleanup@sbcglobal.net)

**CONTACT PERSONNEL**

BEVERLEY J. GANN  
CEO -Owner, Office Manager  
Mobil (951) 685-5314

**AURELIANO LOPEZ**

Head of Operations & Project Management  
Mobil (951) 545-1029



**STATEMENT OF UNDERSTANDING  
AND APPROACH**



# ENVIRONMENTAL

## KLEAN-UP SERVICES INC.

Contractors State License #1008604  
 19069 Van Buren Blvd., Suite 114-PMB Riverside, CA 92508  
 ■ Tel (951) 685-5314 ■ Fax (951) 681-5559  
 e-mail: [envirokleanup@sbcglobal.net](mailto:envirokleanup@sbcglobal.net)

### CONTRACTORS ACKNOWLEDGEMENT OF DUTIES & RESPONSIBILITIES STATEMENT OF UNDERSTANDING AND APPROACH

Environmental Kleanup Services, Inc., acknowledges and understands the duties that entails in the general approach, cleanups include site visitation, surveying of weed abatement services in order to document, the removal fire hazard vegetation, over grown weeds, tumble weeds, debris and trash, dismantling of temporary homeless structures, temporary canopy's, and tree structures, trimming of trees and/or removal, including shrubs, dry vegetation, disking properties/mowing (where soil is turned to cover overgrown weeds) for disposal at City approved disposal sites.

Environmental Kleanup Services, Inc. supplies the necessary project manager, labor (in accordance with DIR and to ensure safety is established), machinery, tractors, safety equipment, protective suits, and hand equipment, equipment, and trucks that will be required to perform the necessary work in order to properly handle and abate weeds, transport, dispose of trash and waste materials, necessary items for disposal for a clean and clear site when project is complete.

Environmental Kleanup Services, Inc. understand that it may necessary at sites to transport identified property for storage directed by City Staff utilizing the guidelines developed for property identification and classification of personal items and transported to storage site directed by City Staff.

Environmental Kleanup Services, Inc. provides pictures of designated sites both before and after cleanups. After each project is completed the pictures will be directed to the City electronically.

Environmental Kleanup Services, Inc. provides the necessary documentation, man time, disposal waste receipts, pictures, etc. to the City Staff.

Environmental Kleanup Services, Inc. works with the Cities and Counties with the best work procedures to safely mange environmental hazards (, materials that may pose a health and safety hazard) along with working towards a deterrent of future abatements.

Sincerely,

*Beverley J. Gann*

Beverley J. Gann

CEO/Owner

**FIRE HAZARD, BRUSH AND  
WEED ABATEMENT SERVICES**



# ENVIRONMENTAL KLEAN-UP SERVICES INC.

Contractors State License # 1008604 DOSH # 595  
19069 Van Buren Blvd., Suite 114-PMB 385, Riverside, CA 92508  
■ Tel (951) 685-5314 ■ Fax (951) 681-5559  
E-Mail: [envirokleanup@sbeglobal.net](mailto:envirokleanup@sbeglobal.net)



## FIRE HAZARD, BRUSH, WEED ABATEMENT REMOVAL SERVICES

**Environmental Kleanup Services** has expertise in the disking, mowing, and rubbish refuse removal of from one half (1/2) acre parcels to one hundred (100) acre parcel lots including fire breaks, weed abatement handwork, etc. We have removed rubbish, refuse, and incidental dirt where necessary. When requested by the owner we have utilized a water truck for dust control.

**Environmental Kleanup Services** has completed numerous projects during the spring season and during the fall tumbleweed season for over ten (10) years. We have completed numerous code compliance projects as well CDF projects successfully. Taking both before and after photos for future reference to establish compliance.

In some cases, we have had to complete the entire project by hand due to the ruff Terrain with great success.

**Environmental Kleanup Services** can provide weed or brush clearing using two methods which is hand removal (handwork) and tractor clearing (tractor work).

**Handwork** involves clearing of the weeds or brush using hand held equipment like weed eaters and chainsaws. In most cases, very dry weeds are simply mulched down using weed eaters, larger plants, branches, brush, etc. these are removed and taken to the approved landfill, sometimes large amounts of brush and branches can be chipped and left onsite. Handwork around structures maintenance is 100 square feet from structures, along property lines. Included in handwork is the trimming up or skirting of trees 8'.

**Tractor work** involves weed and brush clearing using tractors with attachments like disc and mowers. Under specialized conditions a tracklayer (crawler) tractor needs to be utilized in order to negotiate steep slopes, this requires experienced and skilled operators.

**Fire Hazard Abatement** seasonal normally completed in early spring (no later than early July) due to the onset of the fire season and in early fall (no later than the end of November) to remove tumble weeds that may have accumulated during the dry summer. Fire Hazard is best based on weather conditions thru-out the winter season's rainfall weed and brush growth thru-out the dry seasons.

We have clearly demonstrated the ability to complete many nuisance abatement projects thru code compliance departments in County, Cities and the private sector in the Southern California Area.

We offer many types of general weed, rubbish and debris clean-up thru-out the year.

## SAFETY TRAINING PLAN





# ENVIRONMENTAL

## KLEAN-UP SERVICES INC.

Contractors State License # 1008604 DOSH # 595  
 19069 Van Buren Blvd., Suite 114-PMB 385, Riverside, CA 92508  
 ■ Tel (951) 685-5314 ■ Fax (951) 681-5559  
 E-Mail: [envirokleanup@sbcglobal.net](mailto:envirokleanup@sbcglobal.net)



### SAFETY AND TRAINING PLAN

Environmental Kleanup Services primary goal is to operate a profitable business by serving its customers. A primary element of reaching this goal is to keep our employees free from injuries, illness, or harm on the job. We will achieve this, in part, by delegating responsibility and accountability to all involved in this company's operation.

Our safety goals are the following:

- ♦ Minimize or eliminate all injuries and accidents
- ♦ Minimize loss of property and equipment
- ♦ Eliminate all OSHA fines
- ♦ Reduce workers' compensation costs
- ♦ Reduce operating costs

We will achieve our safety goals by:

- ♦ Appointing well-trained people as our safety coordinators
- ♦ Providing all necessary safety training, especially to project managers and safety coordinators
- ♦ Establishing company safety goals
- ♦ Securing safety feedback from our jobsites, all personnel must be able to us informed as to safety and health treats.
- ♦ Adapting company protocols as required to meet safety objectives
- ♦ Developing and implementing a written safety and health program
- ♦ Holding all personnel accountable for performance of safety responsibilities
- ♦ Reviewing the safety and health program annually and revising or updating it as necessary or required

A safety manager shall be appointed to maintain and review all safety issues with both field and office personnel:

- ♦ Gather all relevant safety information prior to start of project
- ♦ Discuss safety policies and procedures prior to start of project
- ♦ Make recommendations for successful completion and implement improvements if required
- ♦ Identify unsafe conditions and work practices and enforce corrections

- ♦ Maintain an adequate stock of first aid supplies and other safety equipment to insure availability
- ♦ Staying current with OSHA regulations and local safety mandates
- ♦ Addressing all hazards or potential hazards as required

The project manager is authorized to shut down projects, upon discovery of any serious threat to personnel.

### **Supervisor/Project Manager**

It is the responsibility of our supervisors and project manager to establish an operating atmosphere that insures that safety and health are managed carefully. They are required to do the following:

- ♦ Regularly emphasize accident and health-hazard-exposure prevention are followed policies
- ♦ Identify operational oversights that could contribute to accidents
- ♦ Participate in safety-and health-related activities, including attending safety meetings, reviewing the projects and correcting behavior that can result in accident and injuries
- ♦ Spend time explaining the safety policies and the hazards particular work.
- ♦ Make sure that a Competent Person is present on site at all times.
- ♦ Do not allow safety to be sacrificed for expediency, nor allow personnel to do so
- ♦ Enforce safety rules consistently. Follow the company's discipline and enforcement procedures
- ♦ Conduct daily job-site safety inspections and correct possible violations

It is the duty of personnel is to know the safety rules, and to conduct work in compliance with these rules. Disregard of the safety and health rules shall be grounds for disciplinary action and/or termination. It is also the duty of personnel to make full use of the safeguards provided for their protection. Personnel will receive safety instructions and required to be responsible for implementing them:

- ♦ Read, understand, and follow safety and health rules and procedures
- ♦ Wear Personal Protective Equipment (PPE) at all times when working in areas where there is a danger of injury
- ♦ Wear suitable work clothes
- ♦ Perform all tasks safely, as directed by supervisor
- ♦ Report all injuries to a supervisor and seek treatment promptly
- ♦ Know the location of first aid, fire fighting equipment, and other safety devices
- ♦ Attend regular safety meetings
- ♦ Not perform potentially hazardous tasks or use hazardous materials unless properly trained in safety procedures
- ♦ Stop and ask questions if in doubt about the safety of any operation

### **Discipline and Enforcement**

Environmental Kleanup Services maintains standards of personnel conduct and supervisory practices which support and promote effective and safe business operations. These supervisory practices include administering corrective action when personnel safety performance or conduct jeopardizes this goal.

### **Training and Education**

Training is an essential component of effective safety and health program addressing the management and personnel at the site. Training is effective when incorporated into performance requirements and job practices. Besides the standard training, personnel should also be trained in recognition of hazards: to be able to look at an operation and identify unsafe acts and conditions. Personnel trained in the recognition and reporting hazards and supervisors trained in the correction of hazards will substantially reduce the likelihood of a serious injury.

- \* Personnel shall be OSHA certified to operate heavy equipment for hazardous clean-up work. Including ground moving equipment, disposal equipment and trailers.
- \* Personnel shall conform to occupational safety and health standards, rules and regulation established for the industry.
- \* Contractor shall be trained in OSHA's Bloodborne Pathogen Standard 1910.1030,
- \* precautions regarding the West Nile Virus, Hanta virus, and histoplasmosis and be able to manage biohazardous, human feces, urine and personnel hygiene safety disposal

### **Safety Rules and Procedures**

- \* No personnel are expected to undertake a job until they have received adequate training
- \* All personnel shall be trained on every potential hazard that they could be exposed to and how to protect themselves
- \* Only qualified trained personnel are permitted to operate machinery or equipment
- \* All injuries at site need to be reported immediately to supervisor
- \* Equipment manufacturers specifications/limitations/instructions shall be followed
- \* Emergency numbers are to be posted
- \* Personnel working in areas where there is a danger of head injury, excessive noise exposure, or potential eye or face injury shall be protected by Personal Protection Equipment (PPE)
- \* All materials for disposal shall be secured to prevent falling, collapse, prevent siding
- \* Ladders for safe access shall be used

**CLIENT REFERENCE INFORMATION**



# ENVIRONMENTAL

## KLEAN-UP SERVICES INC.

### CLIENT REFERENCE LIST

City of San Bernardino, Code Enforcement-Erica Lithen @ 1-909-528-6535  
[Lithen\\_er@sbcity.org](mailto:Lithen_er@sbcity.org)

City of Riverside, Code Enforcement-Susan Delvin or Ed Torres @ 1-(951) 826-5633  
[sdelvin@riversideca.gov](mailto:sdelvin@riversideca.gov)

City of Banning-Code Enforcement-Police Dept.-Debbie Shubin@ 1-(951) 922-3170  
[dshubin@ci.banning.ca.us](mailto:dshubin@ci.banning.ca.us)

County of San Bernardino-Code Enforcement Division-Jeff Sinclair @ 1-909-884-4056  
[Jeffery.Sinclair@lus.sbcounty.gov](mailto:Jeffery.Sinclair@lus.sbcounty.gov)

Soboba Band of Luiseno Indians-Public Works Dept-Kenneth McLaughlin @ 1-951-487-7445  
[kmclaughlin@soboba-nsn.gov](mailto:kmclaughlin@soboba-nsn.gov)

Specialized Realty, Inc.-Artak Dovlatian @ 1-818-546-1212  
[artak@specializedrealty.com](mailto:artak@specializedrealty.com)

Golden Era Productions-Maintenance Dept.-Muriel Dufresne and/or Jeff Mullins  
[muriel@goldeneraproductions.org](mailto:muriel@goldeneraproductions.org)      [jmullins@goldeneraproductions.org](mailto:jmullins@goldeneraproductions.org)

## INSURANCE INFORMATION





# ENVIRONMENTAL

## KLEAN-UP SERVICES INC.

Contractors State License # 1008604 DOSH # 595  
 19069 Van Buren Blvd., Suite 114-PMB 385, Riverside, CA 92508  
 ■ Tel (951) 685-5314 ■ Fax (951) 681-5559  
 E-Mail: [envirokleanup@sbcglobal.net](mailto:envirokleanup@sbcglobal.net)



### INSURANCE SUMMARY

All our proposals include \$2.0 million per Occurrence Liability Coverage, General Liability, Automobile Liability and Workman's Compensation Coverage. We have the access to various types of additional coverage and can tailor a program to suit client's specific requirements.

#### SPECIFIC COVERAGES:

##### INSURANCE:

##### A. General Liability:

- [1] Company Name: Fadaie Insurance Services, Inc.  
 [2] Limit: \$2.0 Million

##### B. Workman's Compensation:

- [1] Company Name: State Workman's Compensation Insurance Fund  
 [2] Limit: \$1.0 Million

##### C. Automobile Insurance:

- [1] Company Name: Progressive Commercial Auto  
 [2] Limit: \$1.0 Million

License permits to operate commercial vehicle's is current with DOT  
 And California Department of



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

05/27/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Fadaie Insurance Services Inc. 27290 Madison Ave Suite 100 Temecula, CA 92590 License #: 0G61081	<b>CONTACT NAME:</b> Kasha Fadaie <b>PHONE (A/C, No, Ext):</b> (951)506-9780 <b>FAX (A/C, No):</b> (888)316-1659 <b>E-MAIL ADDRESS:</b> kash@fadaieinsurance.com <b>INSURER(S) AFFORDING COVERAGE</b>
<b>INSURED</b> Environmental Klean-Up Inc. 19069 Van Buren Blvd Ste 114 Riverside, CA 92508	<b>INSURER A:</b> Crum & Foster <b>NAIC #</b> 44520 <b>INSURER B:</b> United Financial Casualty Company <b>11770</b> <b>INSURER C:</b> Crum & Forster <b>44520</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>

## COVERAGES

CERTIFICATE NUMBER: 00000000-1164641

REVISION NUMBER: 23

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.


INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	Y	EPK122687	05/18/2018	05/18/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	06584599-0	02/28/2018	02/28/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below
C	Microbiological Deco	Y	Y	EPK122687	05/18/2018	05/18/2019	Aggregate 1,000,000 PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate holder is included as additional insured with respect to General Liability including scheduled and completed ops per the attached endorsements CG 20 10 04 13 and CG 20 37 04 13. Demolition, abatement and weed abatement services. Insurance company is primary and non-contributory and is A+ rated, or better noted in the most recent issue of Best Key Rating Guide. The entities to be named additionally Insured are listed in the Certificate Holder section.

## CERTIFICATE HOLDER

## CANCELLATION

City of Banning Administrative Services/Purchasing Division 99 E. Ramsey Street Banning, CA 92220	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE  (KDF)
--	--



P.O. BOX 8192, PLEASANTON, CA 94588

# CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

ISSUE DATE: 08-23-2018

GROUP:  
POLICY NUMBER: 9216644-2018  
CERTIFICATE ID: 2  
CERTIFICATE EXPIRES: 08-23-2019  
08-23-2018/08-23-2019

CITY OF BANNING-ATTN. PURCHASING, S. ROCK SP  
99 E RAMSEY ST  
BANNING CA 92220-4837

JOB: BANNING POLICE DEPART. CODE ENFORCEMENT  
125 E. RAMSEY STREET  
BANNING  
CA 92220

This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon 30 days advance written notice to the employer.

We will also give you 30 days advance notice should this policy be cancelled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.

Authorized Representative

President and CEO

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.

ENDORSEMENT #2065 ENTITLED CERTIFICATE HOLDERS' NOTICE EFFECTIVE 08-29-2017 IS ATTACHED TO AND FORMS A PART OF THIS POLICY.

ENDORSEMENT #2570 ENTITLED WAIVER OF SUBROGATION EFFECTIVE 2018-08-23 IS ATTACHED TO AND FORMS A PART OF THIS POLICY. THIRD PARTY NAME:  
CITY OF BANNING-ATTN. PURCHASING, S. ROCK

EMPLOYER

ENVIRONMENTAL KLEANUP SERVICES INC.  
19069 VAN BUREN BLVD, STE 114

SP



ENDORSEMENT AGREEMENT  
WAIVER OF SUBROGATION

9216644-18  
 RENEWAL  
 SP  
 5-29-17-21  
 PAGE 1 OF 4

HOME OFFICE  
 SAN FRANCISCO

ALL EFFECTIVE DATES ARE  
 AT 12:01 AM PACIFIC  
 STANDARD TIME OR THE  
 TIME INDICATED AT  
 PACIFIC STANDARD TIME

EFFECTIVE AUGUST 23, 2018 AT 12.01 A.M.  
 AND EXPIRING AUGUST 23, 2019 AT 12.01 A.M.

ENVIRONMENTAL KLEAN-UP

19069 VAN BUREN BLVD. STE 114  
 RIVERSIDE, CA 92508

ANYTHING IN THIS POLICY TO THE CONTRARY NOTWITHSTANDING,  
 IT IS AGREED THAT THE STATE COMPENSATION INSURANCE FUND  
 WAIVES ANY RIGHT OF SUBROGATION AGAINST,

CITY OF BANNING-ATTN. PURCHASING,S.ROCK

WHICH MIGHT ARISE BY REASON OF ANY PAYMENT UNDER THIS  
 POLICY IN CONNECTION WITH WORK PERFORMED BY,

ENVIRONMENTAL KLEAN-UP

IT IS FURTHER AGREED THAT THE INSURED SHALL MAINTAIN  
 PAYROLL RECORDS ACCURATELY SEGREGATING THE REMUNERATION  
 OF EMPLOYEES WHILE ENGAGED IN WORK FOR THE ABOVE  
 EMPLOYER.

IT IS FURTHER AGREED THAT PREMIUM ON THE EARNINGS OF SUCH  
 EMPLOYEES SHALL BE INCREASED BY 03%.

NOTHING IN THIS ENDORSEMENT SHALL BE HELD TO VARY, ALTER, WAIVE OR EXTEND  
 ANY OF THE TERMS, CONDITIONS, AGREEMENTS OR LIMITATIONS OF THIS POLICY  
 OTHER THAN AS ABOVE STATED. NOTHING ELSEWHERE IN THIS POLICY SHALL BE  
 HELD TO VARY, ALTER, WAIVE OR LIMIT THE TERMS, CONDITIONS, AGREEMENTS OR  
 LIMITATIONS IN THIS ENDORSEMENT.

## MANAGEMENT TEAM

## ENVIRONMENTAL KLEANUP SERVICES MANAGEMENT TEAM

### EXPERT PROJECT MANAGEMENT

<b>Owner</b>	Beverley J. Gann
<b>Operations and Project Manager</b>	Aureliano Lopez
<b>Office Management</b>	Beverley J. Gann
<b>Site Managers</b>	Aureliano Lopez Jorge Medina
<b>Working Site Supervision</b>	Daniel Vega Martin Torres

Environmental Kleanup Services is made up of experienced construction management and environmental specialists, who are aggressive and hard-working individuals committed to a common goal-success. Our company's success is attributed to this commitment and dedication to quality service.

Environmental Kleanup Services is women owned family business, everyone is hands on. If we are needed on site, all management from the Owner to the Operations and Project Manager down will work hand in hand with personnel to get the job done.

Our company represents strong community ties and traditional family values.

Business is business and we are committed to excellence in the field, highly professional, Very aggressive marketers and tough but fair management. Environmental Kleanup Services personnel are loyal to the cause and traditionally we have paid higher than union wages.

The above listed Site Superintendents and Site Managers are recognized experts with a minimum of 10 years (with the expectation of our director who has over 40 years) Site Supervision, Site Management and Project Management experience in Environmental Remediation, Project Management, Demolition, and Design Build General Contracting Procedures and specifications for the removal of Hazardous Materials: Asbestos, Lead, Lead Paint and Lead Dust, PCB's, Mold and Fungus, UFFI, Infection Control, HEPA Cleaning, Heavy Metals, Chemicals from Commercial, Residential, Institutional, Hospitals, Schools, Industrial and Manufacturing Facilities and Properties.

We provide our clients with only trained, certified and experienced technicians. Our labor Forces is supplied with the newest state-of-the-art equipment. Environmental Kleanup adheres strictly to high standards of personal, health and environmental safety.



Environmental Kleanup Services was established in 1991. EKV is a full service Environmental Demolition contractor specializing in environmental remediation, Lead, PCB's, Turn-Key Environmental Solutions. From Audit and Assessment to complete remediation, with over 18,000 environmental remediation projects, 3500 Lead and Heavy Metal Industrial Plant Cleanups completed successfully. See our reference and client list.

#### **SUPPORT TEAM**

In addition to the people listed above, we have a very competent support team.

## STATEMENT OF QUALIFICATIONS

I. BEVERLEY J. GANN

II. AURELIANO LOPEZ



# ENVIRONMENTAL KLEAN-UP SERVICES INC.

Contractors State License # 1008604 DOSH # 595  
19069 Van Buren Blvd., Suite 114-PMB 385, Riverside, CA 92508  
■ Tel (951) 685-5314 ■ Fax (951) 681-5559  
E-Mail: [envirokleanup@sbeglobal.net](mailto:envirokleanup@sbeglobal.net)



## STATEMENT OF QUALIFICATIONS CONCLUSIONS AND REPRESENTATIONS

**Environmental Klean-Up**, believes that responsible stewardship over the environment is important and is committed to this premise. We also believe that balancing environmental, health and safety concerns with sustainable business goals is also very important. Consequently, we take the environmental industry very seriously. A big reason for this commitment is that the control of environmental cost regarding public safety are highly dependent on these two factors. In the final analysis this means doing the job once and doing it right!

**Environmental Klean-Up's**, longevity is testimony to the fact that its management is adaptable to the changing regulations over time, and the nature of our successful track record can accommodate the most demanding of client environments, and challenges of physical circumstances.

As the Environmental industry matures, **Environmental Klean-Up** is keeping abreast of the growing introduction of technology improvements, both domestic and from abroad. The concept of Total Quality Management is an example; it has been for the past forty years.

In addition to workman's compensation, casualty, automobile and liability insurance, **Environmental Klean-Up** works closely with the police department, code compliance officers, Owners, City, County, and State Officials in order to successfully complete projects in a timely and cost-effective manner.

All management staff has the appropriate and necessary certifications, registrations and licenses. The **EKU** Team of qualified professionals comprises a complete investigation, design and management capability, with a single point of contact and responsible leader for each project or assignment. We stand ready to respond to you needs and will enjoy the challenge.

Contractors State License #1008604  
 19069 Van Buren Blvd., Suite 114-PMB 385, Riverside, CA 92508  
 ■ Tel (951) 685-5314 ■ Fax (951) 681-5559  
 E-Mail: [envirokleanup@sbeglobal.net](mailto:envirokleanup@sbeglobal.net)

**PRESIDENT/OWNER/CEO**  
**BEVERLEY J. GANN**

### **STATEMENT OF QUALIFICATIONS**

**Ms. Gann** is a recognized expert with over thirty years of Project Management and Contracting experience in the Environmental Remediation, Code Compliance Abatement, Project Management, Demolition, and Design Build General Contracting procedures and specifications for the removal of Hazardous Materials, Asbestos, Lead, Lead Paint, Lead Dust, PCBs, Mold and Fungus, UFFI, Infection Control, HEPA Cleaning from Commercial, Residential, Institutional, Hospitals, Schools, Industrial and Manufacturing Facilities and Properties, Federal and Military Bases.

**Ms. Gann** has been involved and completed various homeless encampments for both the public and private sectors. Including code enforcement, police departments, City, County and State agencies, she understands the impact and dangers these encampments have on the public health and safety.

**Ms. Gann** has coordinated various environmental hazards activities in the Environmental, lead and mold remediation field. **Ms. Gann** has been involved with all aspects of environmental pollutants including removal, testing, monitoring, treatment and disposal.

**Beverley** established Environmental Klean-Up in 1991 and has completed various types of Environmental Abatement projects (asbestos/lead/mold demolition), as well as interior demolition projects, partial demolitions (both interior and exterior demolition's), hand dismantling of historical sites and complete site clearances in accordance with State, Federal & EPA Regulations.

Environmental Klean-Up is a turn-key full-service environmental contractor specializing in demolition and environmental remediation projects, which has completed various types of commercial buildings, residential properties, apartment complex's, school sites, service stations, and dairies, Cal-Trans & Federal Military Base projects, etc. for Federal, State, County, City and Private entities successfully.

Environmental Klean-Up under the direction of **Beverley Gann** has completed projects in a swift, dependable, business-like manner under normal circumstances with time to spare for a successful completion of projects. At the present time Environmental Klean-Up does not have any type of City, State or Federal Citation's, nor has any public or private entity had to secure payment or performance bonds towards completion of any contract.

**Ms. Gann** is responsible for contractual documents, the bidding procedures, site visits (Examining of site to be redeveloped), cost estimating, preparation of all documents pertaining to submission of bidding practices, prepare and process of submittals to government prior to start of projects along with correspondence to City, State and Federal Officials, health and safety plans, quality control and production reports. Maintaining and monitoring insurance requirements, air quality notifications, permits, etc.

**Ms. Gann** is responsible for tracking the work performance of employees (in field and office), maintaining quality control of employees and creating a workable environment between client's and ECU personnel is a goal she has established.

**Ms. Gann** is familiar with the demolition industry, hazardous material field (both asbestos, lead and mold), soil and tank removals, she has become familiar with all aspects of the industries laws and regulations, the federal-rule making process, individual policies and procedures of the various City, County, State and Federal Agencies.

Environmental Klean-Up maintains a State of California Contractors License Number 1008604 with a B, C-21, C-27, C-61/D40, ASB, HIC (specialty classifications) and is Registered with the Department of Industrial Relations.

**Ms. Gann** maintains the necessary certifications as prescribed by The Environmental Protection Agency for practices and procedures in environmental remediation as well as the required 40-hour haz-mat certification.

Contractors State License #1008604  
19069 Van Buren Blvd., Suite 114-PMB 385, Riverside, CA 92508  
■ Tel (951) 685-5314 ■ Fax (951) 681-5559  
E-Mail: [envirokleanup@sbcglobal.net](mailto:envirokleanup@sbcglobal.net)

### **STATEMENT OF QUALIFICATIONS**

**Mr. Lopez** is an expert with over 20 years of experience in the Environmental Remediation, Project Management, Demolition and Design Build General Contracting procedures and specifications for the removal of Hazardous Materials Asbestos, Lead, Lead Paint, and Lead Dust, PCBs, Mold & Fungus, UFFI, Infection Control, Hazardous Materials, HEPA Cleaning, from Commercial, Residential, Institutional, Hospitals, Schools, Industrial and Manufacturing Facilities and Properties, Federal, Military Bases and Historic Renovation Projects.

**Mr. Lopez** has been involved with estimating, operations and project management with asbestos/lead and mold abatement. He began working as an asbestos/lead abatement worker and quickly advanced to supervisor. After six months, Mr. Lopez was promoted to the position of Project Manager where advanced to larger projects and became the person chosen to manage projects on the Federal Military Bases. While Project Manager, Mr. Lopez began estimating abatement projects and has estimated and managed multiple projects since 1993.

**Mr. Lopez** has expertise in general nuisance abatement projects including various residential and commercial properties, he has managed general site clean-ups (trash, debris, paint, etc.) including The boarding up of windows, doors, etc., abatement of dangerous pools and spas, the installation of temporary **fencing mowing and weed abatement including trash abatement.**

**Mr. Lopez** has expertise in asbestos/lead/mold abatement includes all aspects of the trade; estimating, project management, consulting, layout, procurement, personnel training, record keeping, job costing, invoicing, etc. Mr. Lopez has maintained excellent working relations with clients, consultants, and regulatory agencies. He has composed "plan of actions" for several projects including various to SCAQMD for procedure 5 abatement projects.

**Mr. Lopez** is very familiar with IBM/compatible computers. He is knowledgeable of MS-DOS 6.22, Windows 95 and Works Suite 2000.

**Education:**

Centennial High School  
\*US Requirement  
Los Angeles City College- Business Major

**Specialized Training:****Fire Hazard Training**

Asbestos Contractor/Supervisor Certification  
Lead Contractor/Supervisor Certification  
Mold Abatement & Remediation Techniques  
AHERA Asbestos Building Inspector Certification  
Project Manager Certification  
Emergency Response Foreman Training  
Emergency First Aid and CPR Training  
Fire Extinguisher Training  
Confined Entry Training for Qualified Person  
Clean Room Training

**References:**

Available Upon Request



**PROFIT AND LOSS STATEMENTS**



# Environmental Cleanup Services, Inc

## PROFIT & LOSS

July - December, 2018

	TOTAL
Income	
Billable Expense Income	81,584.70
K&G Castillo Framing	29,994.70
Services	278,896.15
Unapplied Cash Payment Income	52,078.25
Uncategorized Income	116,867.67
<b>Total Income</b>	<b>\$559,421.47</b>
Cost of Goods Sold	
Cost of Goods Sold	
Equipment Rental - COS	1,882.00
<b>Total Cost of Goods Sold</b>	<b>1,882.00</b>
<b>Total Cost of Goods Sold</b>	<b>\$1,882.00</b>
<b>GROSS PROFIT</b>	<b>\$557,539.47</b>
Expenses	
Advertising & Marketing	731.71
Ask My Accountant	148,422.69
Bank Charges & Fees	3,145.41
Bank Transfer	300.00
Car & Truck	17,312.78
Charitable Contributions	230.18
Credit card payment	4,839.90
Dump Fees	10,461.88
Equipment Rental	7,615.53
Fuel/Gas	639.29
Insurance	4,873.11
General Liability	344.99
Worker's Compensation	2,242.03
<b>Total Insurance</b>	<b>7,460.13</b>
Job Supplies	8,119.28
Legal & Professional Services	10,490.00
Licenses & Permits	1,411.85
Meals & Entertainment	622.46
Office Supplies & Software	2,960.98
Personal	10.82
Petty Cash	5,580.00
Poly Supplies	240.00
Postage and Shipping	170.40
Rent & Lease	8,291.00
Repairs & Maintenance	1,319.21
Sub-Contractors	8,999.00
Dirt Removal	770.00
Equipment Repair/Welding	1,975.00
Equipment/Transportation	3,470.00

	TOTAL
Grading	1,605.00
Labor	500.00
Trucking & Transport	11,542.50
<b>Total Sub-Contractors</b>	<b>28,861.50</b>
Superintendant	900.00
Taxes & Licenses	1,003.87
Tractor Rental	1,590.00
Travel	75.00
Unapplied Cash Bill Payment Expense	254.00
Utilities	6,470.49
Yard Rental	2,400.00
<b>Total Expenses</b>	<b>\$281,930.36</b>
NET OPERATING INCOME	<b>\$275,609.11</b>
NET INCOME	<b>\$275,609.11</b>

## **PROPOSAL**

### **I. EX PARTE COMMUNICATIONS**

### **II. DISQUALIFICATION QUESTIONARE**

### **III. DISCLOSURE OF GOVERNMENT POSITIONS**

### **IV. PRICE PROPOSAL FORM**

**EXHIBIT A**

**Proposal Forms (to be submitted with, and as part of proposal)**

---The rest of this page is intentionally left blank---

**EX PARTE COMMUNICATIONS CERTIFICATION**

Please indicate by signing below one of the following two statements. **Only sign one statement.**

I certify that Proposer and Proposer's representatives have not had any communication with a City Councilmember concerning this RFP at any time after the date advertised.

A handwritten signature in cursive script, appearing to read "Beverly J. Davis", is written over a horizontal line.

**OR**

I certify that Proposer or Proposer's representatives have communicated after the date this RFP was advertised with a City Councilmember concerning this RFP. A copy of all such communications is attached to this form for public distribution.

---



**DISQUALIFICATIONS QUESTIONNAIRE**

The Consultant shall complete the following questionnaire:

Has the Consultant, any officer of the Consultant, or any employee of the Consultant who has proprietary interest in the Consultant, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

Yes \_\_\_\_\_ No   X  

If the answer is yes, explain the circumstances in the following space.

**DISCLOSURE OF GOVERNMENT POSITIONS**

Each Proposer shall disclose below whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months. List below or state "None."

"None"

BJS.

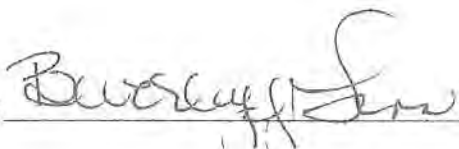
**PRICE PROPOSAL FORM**

All proposals submitted shall have a stated dollar bid amount for providing the services outlined in the Scope of Services. All proposals shall include a full and complete breakdown of all the costs, and proposed fees including but not limited to hourly rates, reimbursable expenses and/or rates, mileage and/or travel cost, miscellaneous fees, etc., including the costs for the items listed below, and any additional costs which the proposer shall add to the table below, and submit as part of their proposal.

The City cannot guarantee the quantity of work required during the term of the contract. All City of Banning Contracts will be at a rate up to \$100.00 per acre for disking and moving. Hand work up to \$35.00 per hour per person. City approval needed on lots over \$400 in cost for weed abatement. Up to \$1.00 per picture, 6 picture maximum (3 "before" and 3 "after"). If dumping fees are necessary, Company will need to provide a receipt from the dump and the actual fees will be reimbursed. One dump receipt can be used for more than one lot as long as the charge is prorated fairly among the lots.

Type or Description of Service	Unit of Measurement	Unit Price
Disking & Moving	/Acre	\$ 84.50
Hand Work	/Hour/Person	\$ 32.70
Pictures	/Picture	\$ 1.00 Each page
Disposal Fees	327.00 Trailer	\$ Will be charged prorated
		\$
		\$
		\$
		\$
		\$
		\$

Authorized Signature:



Date:

2/6/2019



## DeGuire Weed Abatement

20895 Warren Rd.

Perris, CA 92570

p. 951-741-4790

f. 951-934-6711

e. [office@dgweeds.com](mailto:office@dgweeds.com)

w. [jimsweedabatement.com](http://jimsweedabatement.com)

To Whom It May Concern,

Please accept this letter as are intention to enter into a contact with the City of Banning for on-call weed abatement. We have read and understand the RFP. We have included references and are full capable to perform the services as stated in the RFP.

We have over the years perform this type of service in many different city's and county's in the Inland Empire. Our processes include disking and mowing with Ag type tractors and attachments. We also provide handwork as needed with heavy duty gas weed trimmers and brush trimmers. I, Matthew Swoboda (CFO) manage and schedule all projects. I can be reached at 951-741-4790 and via email at [matt@dgweeds.com](mailto:matt@dgweeds.com) should you have any questions.

A handwritten signature in black ink, appearing to read 'Matthew Swoboda'. The signature is stylized with a large, sweeping 'M' and a trailing flourish.

Matthew Swoboda

DeGuire Weed Abatement, Inc. (an S-Corp)

Main Office: 20895 Warren Rd, Perris, CA 92570

Main Phone: 951-741-4790

Main Contact: Matthew Swoboda

**EXHIBIT A**

**Proposal Forms (to be submitted with, and as part of proposal)**

---The rest of this page is intentionally left blank---

**EX PARTE COMMUNICATIONS CERTIFICATION**

Please indicate by signing below one of the following two statements. **Only sign one statement.**

I certify that Proposer and Proposer's representatives have not had any communication with a City Councilmember concerning this RFP at any time after the date advertised.

  
\_\_\_\_\_

**OR**

I certify that Proposer or Proposer's representatives have communicated after the date this RFP was advertised with a City Councilmember concerning this RFP. A copy of all such communications is attached to this form for public distribution.

\_\_\_\_\_



**DISCLOSURE OF GOVERNMENT POSITIONS**

Each Proposer shall disclose below whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months. List below or state "None."

NONE

**PRICE PROPOSAL FORM**

All proposals submitted shall have a stated dollar bid amount for providing the services outlined in the Scope of Services. All proposals shall include a full and complete breakdown of all the costs, and proposed fees including but not limited to hourly rates, reimbursable expenses and/or rates, mileage and/or travel cost, miscellaneous fees, etc., including the costs for the items listed below, and any additional costs which the proposer shall add to the table below, and submit as part of their proposal.

The City cannot guarantee the quantity of work required during the term of the contract. All City of Banning Contracts will be at a rate up to \$100.00 per acre for disking and moving. Hand work up to \$35.00 per hour per person. City approval needed on lots over \$400 in cost for weed abatement. Up to \$1.00 per picture, 6 picture maximum (3 "before" and 3 "after"). If dumping fees are necessary, Company will need to provide a receipt from the dump and the actual fees will be reimbursed. One dump receipt can be used for more than one lot as long as the charge is prorated fairly among the lots.

Type or Description of Service	Unit of Measurement	Unit Price
Disking & Moving	/Acre	\$ 100.00
Hand Work	/Hour/Person	\$ 35.00
Pictures	/Picture	\$ 1.00
		\$
		\$
		\$
		\$
		\$
		\$
		\$

Authorized Signature: \_\_\_\_\_



Date: 2-6-2019

## References

1. Agency or Firm Name:	Riverside County Hazard Reduction
Business Address:	
Mailing Address:	P.O. Box 2047, Perris, CA 92570
Contact Person:	Joe Lewis
Telephone:	951-238-3625
Email address:	
Type of Service:	Weed Abatement
Dates(s) when service provided	2012 thru 2016
2. Agency or Firm Name:	Riverside County Regional Parks and Open Spaces
Business Address:	4600 Crestmore Rd, Jurupa Valley, CA 92509
Mailing Address:	
Contact Person:	Ruben Rodriguez
Telephone:	951-906-9326
Email address:	
Type of Service:	Weed Abatement Mowing
Dates(s) when service provided	2012 to Present
3. Agency or Firm Name:	Rubidoux Community Services District
Business Address:	3590 Rubidoux Blvd, Jurupa Valley, CA 92509
Mailing Address:	
Contact Person:	Eric Martel
Telephone:	951-238-3626
Email address:	
Type of Service:	Weed Abatement
Dates(s) when service provided	2014, 2016, 2018

## DISCLOSURES

NO known relationships with current Banning employee's or official's



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/25/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Gillespie Insurance Services 222 East Olive Ave, Suite 6 Redlands, CA 92373 License #: 0H45052	<b>CONTACT</b> NAME: Ivah C. Zapp PHONE (A/C, No, Ext): (909)793-1846 FAX (A/C, No): (909)793-9586 E-MAIL: ivah@giscovrage.com ADDRESS: INSURER(S) AFFORDING COVERAGE NAIC #
<b>INSURED</b> DeGuire Weed Abatement, Inc. 20895 Warren Rd Perris, CA 92570	INSURER A: Security National Insurance Company 19879 INSURER B: Integon Preferred Insurance Company 31488 INSURER C: State Compensation Insurance Fund 35076 INSURER D: INSURER E: INSURER F:

## COVERAGES

CERTIFICATE NUMBER: 00000000-37018

REVISION NUMBER: 26

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

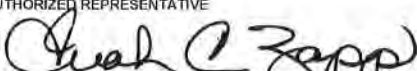
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER			NA105033405	03/16/2018	03/16/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$			2002195534	07/29/2018	07/29/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ EACH OCCURRENCE \$ AGGREGATE \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y	N/A	9139599-18	09/01/2018	09/01/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Weed Abatement

## CERTIFICATE HOLDER

## CANCELLATION

Proof of Insurance	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE  (ICZ)
--------------------	--

© 1988-2015 ACORD CORPORATION. All rights reserved.

J.P. Nelson and Sons' Construction, Inc.  
Contractor Lic. 437127 A-B

January 26, 2019

To the City of Banning,

J.P. Nelson and Sons' Construction are prepared to perform in a professional and timely manner for weed abatement services. We have reviewed and read all elements of the RFP and understand them.

J.P. Nelson and Sons' have been in business in the City of Banning since 1983. We are a licensed Contractor in the state of California. Licenses include: Class A General Engineering; Class B-1 General Contractor.

Services rendered, but not limited to: tractor and dirt; septic systems; sewer laterals; and weed abatement. Weed abatement being a seasonal part of our company. We enjoy the discing aspect of the job and the finish product of lots/acres.

Please feel free to contact me anytime day or night, thank-you,

J.P. Nelson  
President  
951-836-0634



## Company Information

Contact Person:

J.P. Nelson

1577 W. Jacinto View Rd.

Banning, CA. 92220

Cell: 951-836-0634

We are a Corporation, J.P. Nelson and Sons' Construction, Inc.

License # 437127.

We have been doing weed abatement for the past 25 years. We have been licensed contractor since 1983 and have never had any litigation or arbitration regarding services rendered.

## Company Personnel and References

J.P. Nelson will be the operator of the tractor and disc. One employee will be doing seed eating/driving dump truck.

Employee's name:

Joe Queones

Cell (951) 452-9860

References:

Phillip Silver Real Estate

(714) 501-0972

Susan Cardean Land Owner

(760) 565-1702

Nicolet St.

(714) 267-2552

City of Banning Code Enforcement

(909) 709-2224

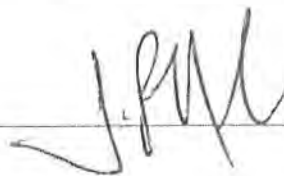
**PRICE PROPOSAL FORM**

All proposals submitted shall have a stated dollar bid amount for providing the services outlined in the Scope of Services. All proposals shall include a full and complete breakdown of all the costs, and proposed fees including but not limited to hourly rates, reimbursable expenses and/or rates, mileage and/or travel cost, miscellaneous fees, etc., including the costs for the items listed below, and any additional costs which the proposer shall add to the table below, and submit as part of their proposal.

The City cannot guarantee the quantity of work required during the term of the contract. All City of Banning Contracts will be at a rate up to \$100.00 per acre for disking and moving. Hand work up to \$35.00 per hour per person. City approval needed on lots over \$400 in cost for weed abatement. Up to \$1.00 per picture, 6 picture maximum (3 "before" and 3 "after"). If dumping fees are necessary, Company will need to provide a receipt from the dump and the actual fees will be reimbursed. One dump receipt can be used for more than one lot as long as the charge is prorated fairly among the lots.

Type or Description of Service	Unit of Measurement	Unit Price
Disking & Moving	/Acre	\$ 125. <sup>00</sup>
Hand Work	/Hour/Person	\$ 35. <sup>00</sup>
Pictures	/Picture	\$ 1. <sup>00</sup>
Dump Truck	Hour	\$ 75. <sup>00</sup>
Dump Fees	COST	\$ Reimbursed
		\$
		\$
		\$
		\$
		\$

Authorized Signature: \_\_\_\_\_



Date: \_\_\_\_\_

1/11/19

**DISQUALIFICATIONS QUESTIONNAIRE**

The Consultant shall complete the following questionnaire:

Has the Consultant, any officer of the Consultant, or any employee of the Consultant who has proprietary interest in the Consultant, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

Yes \_\_\_\_\_ No ☒

If the answer is yes, explain the circumstances in the following space.

**EX PARTE COMMUNICATIONS CERTIFICATION**

Please indicate by signing below one of the following two statements. **Only sign one statement.**

I certify that Proposer and Proposer's representatives have not had any communication with a City Councilmember concerning this RFP at any time after the date advertised.

  
\_\_\_\_\_

**OR**

I certify that Proposer or Proposer's representatives have communicated after the date this RFP was advertised with a City Councilmember concerning this RFP. A copy of all such communications is attached to this form for public distribution.

\_\_\_\_\_

**J.P. NELSON & SONS CONSTRUCTION, INC.****STATEMENT OF REVENUES AND EXPENSES**

For the Three Months and Year Ended

December 31, 2018

	Current Period		Year To Date	
	Amount	Percent	Amount	Percent
<b>INCOME</b>				
Income	\$ 41,407.08	100.0	\$ 111,620.08	100.0
TOTAL INCOME	41,407.08	100.0	111,620.08	100.0
<b>EXPENSES</b>				
Accounting & Legal	110.00	0.3	1,307.00	1.2
Advertising	0.00	0.0	266.00	0.2
Auto & Truck	3,284.07	7.9	7,399.96	6.6
Bank Charges	10.00	0.0	40.00	0.0
Contributions	1,000.00	2.4	1,701.50	1.5
Data Processing, Payroll	0.00	0.0	75.00	0.1
Dump Fees	123.75	0.3	123.75	0.1
Dues & Subscriptions	195.00	0.5	417.45	0.4
Equipment Rentals	72.30	0.2	135.76	0.1
Employee Medical	0.00	0.0	40.00	0.0
Fuel	1,422.40	3.4	6,951.95	6.2
Insurance, General	1,748.68	4.2	8,811.22	7.9
Insurance, Workers Comp	445.50	1.1	2,349.00	2.1
Licenses & Permits	2,422.34	5.9	3,511.34	3.1
Meals	21.60	0.1	707.43	0.6
Office Expense	0.00	0.0	262.63	0.2
Outside Services	5,810.00	14.0	18,820.00	16.9
Payroll, Officer	3,600.00	8.7	10,800.00	9.7
Postage	0.00	0.0	50.00	0.0
Repairs & Maintenance	(20.16)	(0.0)	1,994.18	1.8
Rent	0.00	0.0	600.00	0.5
Small Tools	39.38	0.1	398.99	0.4
Supplies	14,843.55	35.8	36,852.47	33.0
Taxes, Franchise	0.00	0.0	800.00	0.7
Taxes, Payroll	0.00	0.0	1,253.20	1.1
Telephone	669.67	1.6	3,498.98	3.1
Utilities	612.39	1.5	2,171.16	1.9
TOTAL EXPENSES	36,410.47	87.9	111,338.97	99.7
Income From Operations	4,996.61	12.1	281.11	0.3
<b>OTHER INCOME AND EXPENSE</b>				
TOTAL OTHER INCOME AND EXPENSE	0.00	0.0	0.00	0.0

PREPARED WITHOUT AUDIT





P.O. BOX 8192, PLEASANTON, CA 94588

## CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

ISSUE DATE: 10-01-2018

GROUP:  
POLICY NUMBER: 1960052-2018  
CERTIFICATE ID: 9  
CERTIFICATE EXPIRES: 10-01-2019  
10-01-2018/10-01-2019

CITY OF BANNING  
ENGINEERING DEPT ATTN: PAM  
99 E RAMSEY ST  
BANNING CA 92220-4837

SP

This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon 30 days advance written notice to the employer.

We will also give you 30 days advance notice should this policy be cancelled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.

Authorized Representative

President and CEO

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.

ENDORSEMENT #0015 ENTITLED ADDITIONAL INSURED EMPLOYER EFFECTIVE 2012-10-01 IS ATTACHED TO AND FORMS A PART OF THIS POLICY. NAME OF ADDITIONAL INSURED:  
CITY OF BANNING

ENDORSEMENT #2065 ENTITLED CERTIFICATE HOLDERS' NOTICE EFFECTIVE 10-01-2012 IS ATTACHED TO AND FORMS A PART OF THIS POLICY.

EMPLOYER

J P NELSON & SONS CONSTRUCTION INC  
1577 W JACINTO VIEW RD  
BANNING CA 92220

SP



## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
01/30/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	Neilson & Phillips Insurance Services, Inc. 2208 Plaza Drive Suite 115 Rocklin CA 95765-	CONTACT NAME: Dave Neilson PHONE (A/C No. Ext): (916)380-5952 E-MAIL: dave@neilson-phillips.com FAX (A/C No.): (916)380-5953
	INSURER(S) AFFORDING COVERAGE	
INSURED	J.P. Nelson & Son's Construction, Inc. 1577 W. Jacanto View Rd. Banning CA 92220-	INSURER A: Financial Pacific Insurance CO 31453 INSURER B: Wesco Insurance Company 25011 INSURER C: INSURER D: INSURER E: INSURER F:

### COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSURER	TYPE OF INSURANCE	ADDL SUBR	POLICY NUMBER	POLICY EFF	POLICY EXP	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC		60433422	08/03/2018	08/03/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occ/limit) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		WPP1406104-03	10/18/2018	10/18/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A				WC STATU- TORY LIMITS <input type="checkbox"/> OTH- ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	RENTED/BOROWED/HIRED EQUIPMENT		60433422	08/03/2018	08/03/2019	LIMIT: 100,000 DEDUCTIBLE: 500

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
CANCELLATION EXCEPTION: 10 DAYS NOTICE FOR NON-PAYMENT OF PREMIUM.

Project/Location: Weed Abatement

City of Banning, its elected and appointed officers, employees and agents (acting within the scope of their duties that are controlled and supervised by the primary (first) additional insured) are named as additional insured per attached endorsement.  
Primary Wording & Waiver of Subrogation apply per attached.

### CERTIFICATE HOLDER

### CANCELLATION

AI 025521

City of Banning  
PO Box 998  
Banning, CA 92220-

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Fax: ( ) -

# ***ATTACHMENT 5***

(Bid Tabulations)

	**West	Environmental	Deguire	JP
VA	100	70	60	61
DS	92	77	92	82
AC	100	48	78	54
Total	292	195	230	197
<b>Avg. Score</b>	<b>97.33</b>	<b>65</b>	<b>76.67</b>	<b>65.67</b>
Rank	1	4	2	3

\*\*Vendor does not meet prevailing wage requirements

**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**



**CITY OF BANNING  
PUBLIC HEARING**

**TO:** CITY COUNCIL

**FROM:** Doug Schulze, City Manager

**PREPARED BY:** Art Vela, Public Works Director  
Holly Stuart, Management Analyst

**MEETING DATE:** June 11, 2019

**SUBJECT:** Adopt Resolution, Establishing Fiscal Year 2020 Service Charges for the Collection, Transportation and Disposal of Solid Waste

**RECOMMENDATION ACTION:**

The City Council adopt Resolution:

1. Establishing the Fiscal Year 2020 rate increase for the Collection, Transportation and Disposal of Solid Waste services.
2. The Fiscal Year 2020 rate adjustment for the Collection, Transportation and Disposal of Solid Waste services shall be effective July 1, 2019 and is equal to an overall increase of 3.08%.
3. Rescind all previous Collection, Transportation and Disposal of Solid Waste rate structures.

**BACKGROUND:**

The City of Banning ("City") entered into a Franchise Agreement ("Agreement") for the Collection, Transportation, and Disposal of Solid Waste with Waste Management of the Inland Empire (WM) in 1993 for an eight-year period.

Subsequently, the City Council at its regular meeting on April 24, 2001, adopted Resolution 2001-35, extending the Agreement through the First Amendment for an additional five years as allowed per the Agreement, from July 1, 2001 to June 30, 2006. The Agreement was also re-negotiated to include automated services.



On March 15, 2002 under Resolution 2002-28 and execution of the Second Amendment, the contract was re-negotiated to extend the Agreement for an additional five-year period from July 1, 2006 to June 30, 2011.

On December 12, 2006 under Resolution 2006-99 and with the execution of the Third Amendment, the agreement terms were modified and conditions of the Agreement for the collection of Bulky Waste were adjusted.

On June 28, 2011 under Resolution 2011-53 and with the execution of the Fourth Amendment, bulky item services were adjusted and the term was extended for an additional ten years from July 1, 2011 to June 30, 2021.

On September 11, 2018, the Fifth Amendment was processed revising the methodology for determining the annual rate adjustment calculation.

The Agreement allows for an annual rate adjustment and requires that adjustments adhere to the requirements of Proposition 218 (Prop 218), including: 1) providing notification to all affected property owners and rate payers of the proposed rates and instructions for those who wish to protest the rate increases; 2) holding a public hearing at least forty-five (45) days after mailing the notifications; and 3) rejecting the proposed rate adjustments if written protests are presented by a majority (fifty percent plus one) of affected property owners or rate payers; only one protest per parcel would apply.

A Prop 218 process was last administered in July of 2018 and approved by rate payers and City Council under Resolution 2018-110 at a Public Hearing on September 11, 2018. The approval allowed for rates to be adjusted annually, utilizing an approved methodology, for a five (5) year period.

To date under the most recently approved Prop 218 process and City Council approved Resolution 2008-110, a rate adjustment was implemented in October 2018. As a result, four (4) remaining future adjustments are permitted to occur July 1<sup>st</sup> of 2019, 2020, 2021 and 2022.

### **JUSTIFICATION:**

On May 24, 2019 WM requested an annual rate adjustment for Fiscal Year 2020 (July 1, 2019 – June 30, 2020) with implementation occurring July 1, 2019. The rate adjustment request letter from WM is attached. Pursuant to the Franchise Agreement, there are two components to the solid waste service rate that require evaluation: 1) Service Component and 2) Disposal/Green Waste Processing Component. The service component, which makes up sixty-five percent (65%) of the solid waste service rate, may be adjusted by the percentage increase in the Consumer Price Index ("CPI"), for the All Urban Consumers, for the Riverside-San Bernardino-Ontario Area as published by the United States Department of labor, Bureau of Labor Statistics for the March to March period immediately preceding the effective date of the rate adjustment. The Disposal/Green Waste Processing



Component, which makes up thirty-five percent (35%), may be adjusted by the greater of either the CPI adjustment as explained above or the percentage increase in the per ton tipping fee established by the Riverside County Waste Management Department for disposal of Solid Waste for the March to February period immediately preceding the effective date of the rate adjustment.

In following the approved methodology, the change in the CPI for Fiscal Year 2019 is 2.80% and will be applied to the service component of the rate. This year, the landfill Tipping Fee increased by 3.61% from \$37.94 to \$39.31 per ton and therefore will be applied to the disposal/green waste component of the rate. As a result, the overall rate adjustment will reflect an increase of 3.08%. The rate schedule is attached hereto.

In addition to the standard annual rate adjustments, pursuant to the Franchise Agreement, WM is entitled to rate adjustments in an amount equal to an extraordinary change in the cost of collection. Such extraordinary adjustments may include: 1) a change in the location of the landfill or other lawful disposal sites; 2) increase or decrease in other permit fees payable to WM based on WM's operations; and 3) changes not otherwise included in the Franchise Agreement in the local, State or Federal laws governing collection, separation, transportation of solid waste.

As a result, WM has requested increases to the existing overage and contamination fees. The current overage fee is \$49.27 and WM is proposing an approximate 20.30% rate increase to \$59.27. According to WM, the higher rate will incline customers to adjust their service levels to ensure that overfilled waste bins are minimized, keeping the City cleaner.

The current contamination fee is \$64.54 and WM is proposing an approximate increase of 3.80% to \$67.00. According to WM, the rate increase will allow for WM to minimize contamination to recycling material which will safeguard diversion tonnage goals from being negatively impacted.

### **FISCAL IMPACT:**

The current residential rate for the collection of refuse is \$21.71 per month per household and the rate will increase to \$22.38. The commercial rate will be adjusted accordingly, as shown in the attached residential and commercial rate schedule. The new rate schedule will be effective July 1, 2019.

As previously mentioned, future rate increases will occur July 1<sup>st</sup> of 2020, 2021 and 2022. For informational purposes, staff will report future rate adjustments to the City Council prior to implementation.

### **ALTERNATIVES:**

Reject WM's request to increase overage and contamination fees for a percentage increase more than 3.08%. If rejected, per the Franchise Agreement, the previously adopted overage and contamination fees shall remain in effect with the implementation

of a 3.08% increase. Pursuant to the Franchise Agreement, WM shall have the right to dispute the denial action by pursuing measures outlined in the Franchise Agreement.

**ATTACHMENTS:**

1. Resolution 2019-\_\_\_\_\_
2. WM Letter Requesting a Rate Adjustment
3. Proposed Rate Schedule effective July 1, 2019
4. Rate Comparison

Approved by:

  
\_\_\_\_\_  
Douglas Schulze  
City Manager

# ATTACHMENT 1

(Resolution 2019-\_\_\_\_)

## RESOLUTION 2019-\_\_\_\_

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA,  
ESTABLISHING FISCAL YEAR 2020 SERVICE CHARGES FOR THE COLLECTION,  
TRANSPORTATION AND DISPOSAL OF SOLID WASTE**

**WHEREAS**, the City of Banning ("City") entered into a Franchise Agreement ("Agreement") for the Collection, Transportation, and Disposal of Solid Waste with Waste Management of the Inland Empire (WM) in 1993 for an eight-year period; and

**WHEREAS**, the City Council at its regular meeting on April 24, 2001, adopted Resolution 2001-35, extending the Agreement through the First Amendment for an additional five years as allowed per the Agreement, from July 1, 2001 to June 30, 2006. The Agreement was also re-negotiated to include automated services; and

**WHEREAS**, on March 15, 2002 under Resolution 2002-28 and execution of the Second Amendment, the contract was re-negotiated to extend the Agreement for an additional five-year period from July 1, 2006 to June 30, 2011; and

**WHEREAS**, on December 12, 2006 under Resolution 2006-99 and with the execution of the Third Amendment, the agreement terms were modified and conditions of the Agreement for the collection of Bulky Waste were adjusted; and

**WHEREAS**, on June 28, 2011 under Resolution 2011-53 and with the execution of the Fourth Amendment, bulky item services were adjusted and the term was extended for an additional ten years from July 1, 2011 to June 30, 2021; and

**WHEREAS**, on September 11, 2018, the Fifth Amendment was processed revising the methodology for determining the annual rate adjustment calculation; and

**WHEREAS**, pursuant to the Franchise Agreement, annual rate adjustments related to changes in the tipping fee and Consumer Price Index (CPI) are permitted so long as Proposition 218 requirements are satisfied; and

**WHEREAS**, a Proposition 218 process was administered in July of 2018 and approved by rate payers and City Council at a Public Hearing on September 11, 2018 under Resolution 2018-110 with rate adjustments to occur October 1, 2018, July 1<sup>st</sup> of 2019, 2020, 2021 and 2022; and

**WHEREAS**, on May 24, 2019, Waste Management submitted a request for the annual rate adjustment effective July 1, 2019 which included an adjustment in the CPI, tipping fee and additional rate adjustments to the overage and contamination fees; and

**WHEREAS**, pursuant to the Franchise Agreement, there are two components to the solid waste service rate that require evaluation annually: 1) Service Component and 2) Disposal/Green Waste Processing Component. The service component, which makes up

sixty-five percent (65%) of the solid waste service rate, may be adjusted by the percentage increase in the Consumer Price Index ("CPI"), for the All Urban Consumers, for the Riverside-San Bernardino-Ontario Area as published by the United States Department of Labor, Bureau of Labor Statistics for the March to March period immediately preceding the effective date of the rate adjustment. The Disposal/Green Waste Processing Component, which makes up thirty-five percent (35%), may be adjusted by the greater of either the CPI adjustment as explained above or the percentage increase in the per ton tipping fee established by the Riverside County Waste Management Department for disposal of Solid Waste for the March to February period immediately preceding the effective date of the rate adjustment; and

**WHEREAS**, in following the approved methodology, the change in the CPI for Fiscal Year 2019 is 2.80% and has been applied to the service component of the rate and the landfill Tipping Fee increased by 3.61% from \$37.94 to \$39.31 per ton and has been applied to the disposal/green waste component of the rate with the overall rate adjustment increasing a total of 3.08% (rate schedule is attached); and

**WHEREAS**, pursuant to the Franchise Agreement, WM is also entitled to rate adjustments in an amount equal to an extraordinary change in the cost of collection which adjustments may include: 1) a change in the location of the landfill or other lawful disposal sites; 2) increase or decrease in other permit fees payable to WM based on WM's operations; and 3) changes not otherwise included in the Franchise Agreement in the local, State or Federal laws governing collection, separation, transportation of solid waste; and

**WHEREAS**, WM requested a revision to the overage fee increasing the rate approximately 20.30% from \$49.27 to \$59.27 encouraging customers to adjust their service levels to ensure that overfilled waste bins are minimized, keeping the City cleaner; and

**WHEREAS**, WM requested a revision to the contamination fee increasing the rate approximately 3.80% from \$64.54 to \$67.00 with WM anticipating that the rate increase will minimize contamination to recycling material which will safeguard diversion tonnage goals from being negatively impacted; and

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning as follows:

**SECTION 1.** Adopt Resolution establishing the Fiscal Year 2020 rate increase for the Service Charges for the Collection, Transportation and Disposal of Solid Waste.

**SECTION 2.** This Resolution shall be considered as adopted by the City Council and rates will become effective on July 1, 2019.

**SECTION 3.** All previous Collection, Transportation and Disposal of Solid Waste rate structures are hereby rescinded.

**SECTION 4.** The City Clerk shall certify to the adoption of this Resolution and shall cause a certified resolution to be filed in the book of original resolutions.

**PASSED, APPROVED AND ADOPTED** this 11<sup>th</sup> day of June, 2019.

\_\_\_\_\_  
Arthur L. Welch, Mayor  
City of Banning

**ATTEST:**

\_\_\_\_\_  
Daryl Betancur, Deputy City Clerk  
City of Banning

**APPROVED AS TO FORM AND  
LEGAL CONTENT:**

\_\_\_\_\_  
Kevin G. Ennis, City Attorney  
Richards, Watson & Gershon

**CERTIFICATION:**

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-\_\_\_ was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 11th day of June, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Daryl Betancur, Deputy City Clerk  
City of Banning, California



# ATTACHMENT 2

(WM Letter Requesting a Rate Adjustment)


**WASTE MANAGEMENT**

17700 Indian St.  
Moreno Valley, CA 92551

May 24, 2019

Mr. Art Vela  
Director of Public Works  
City of Banning  
99 East Ramsey Street  
Banning, CA 92220

RE: 2019/2020 Rate Adjustment Request

Dear Mr. Vela:

Pursuant to Section 18A8, Annual Rate Adjustment of the franchise agreement, the 2019/2020 rate adjustment was calculated by using the Consumer Price Index as prepared by the United States Department of Bureau of Labor Statistics for the Riverside-San Bernardino-Ontario Metropolitan Area, all urban consumers March 2019 index.

**Summary of Proposed Adjustments**

- CPI- The average annual percentage change increase was 1.82% and should be applied to all service components and ancillary charges in the current rate sheet.
- Solid Waste Disposal Costs- The Riverside County tipping fee will be increasing by 1.26% and will be applied to all disposal components of the rate structure. The disposal component of the rates will increase from \$37.94 to \$39.31 per ton.
- Overall Rate Adjustment – The overall rate adjustment to the residential customer will be 3.08 %.

**Customer Rate Overview:**

Residential Rate - \$ 22.38 | Commercial Rate- \$ 126.11 (3-yard, 1 X per week)

In addition, Waste Management is requesting the outlined below to address service impacts:

**Overage Fee Adjustment - \$59.27 [Existing Program in Place]**

The Snapshot program works with customers to manage the problem of trash overflow and under-serviced accounts. Customers may receive "snapshot" photos taken by drivers of overage or other hazards with suggestions for service changes to remediate the issue. The goal of the program assisting customers with establishing the appropriate service levels for their needs, container maintenance & safety issues. We would like to request that the current Snapshot rate of \$49.27 be increased to \$59.27. With a higher rate, customers will be inclined to properly adjust their service levels to ensure that over filled waste bins are minimized which help keep the City clean.

**Contamination Fee Adjustment - \$67.00 [Existing Program in Place]**

The Contamination program works with customers to manage the problem of contamination in recycling accounts. Customers may receive a notification taken by drivers of improperly disposed items or other hazards with suggestions for proper ways to recycle right to remediate the issue. The goal of the program is to increase participation in clean recycling and diverting streams from the landfill as required by AB341 and AB1826 and upcoming legislations. We would like to request that the current rate of \$64.54 be increased to \$67.00. With a higher rate, customers will be inclined to recycle often and recycle right. This ensures that we can minimize contamination in the recycling material to safeguard our diversion tonnage goals from being negatively impacted.

With the Council's approval, we would like to implement these new service rates effective July 1, 2019, in conjunction with our annual rate adjustment.

Please feel free to contact me if you have any questions at (951) 218-1189. I look forward to meeting with you to discuss these items in detail. Meanwhile, Waste Management is proud to service the Banning community.

Respectfully,

Clara Vera

Representative to the City of Banning  
Waste Management

Cc: Lily Quiroa, Waste Management  
Steve Kanow, Waste Management

# **ATTACHMENT 3**

(Rate Schedule effective July 1, 2019)

## NEW RATES FOR RESIDENTIAL AND COMMERCIAL EFFECTIVE : July 1, 2019

## RESIDENTIAL SERVICES:

	Current Monthly Rate	2019-20* New Rate
<b>Residential Cart Service:</b>		
Basic Rate	\$21.71	\$22.38

	Current Monthly Rate	2019-20* New Rate
<b>Other Residential Fees:</b>		
Additional 96-Gal Trash Cart	\$8.67	\$8.94
Additional 64-Gal Trash Cart	\$6.94	\$7.15
Additional 35-Gal Trash Cart	\$5.21	\$5.37
Additional Recycle Cart - Any Size	\$2.23	\$2.30
Additional Green Waste Cart - Any Size	\$5.31	\$5.47
Residential Set-up Fee	\$11.40	\$11.75
Cart Exchange - Excess of 1 p/year	\$26.08	\$26.88
Additional Bulky & E-waste - Per Item	\$19.83	\$20.44
Residential Contamination Fee	\$15.51	\$15.99
Return Service Fee	\$15.00	\$15.46

## COMMERCIAL SERVICES:

	Current Monthly Rate	2019-20* New Rate
<b>Commercial Can Service:</b>		
Commercial Carts - Trash/Recycle Only	\$22.08	\$22.76

	Current Monthly Rate	2019-20* New Rate
<b>Commercial Trash Service:</b>		
2 Yard, 1x a week	\$93.41	\$96.29
2 Yard, 2x a week	\$186.80	\$192.55
2 Yard, 3x a week	\$273.09	\$281.50
2 Yard, 4x a week	\$361.15	\$372.27
2 Yard, 5x a week	\$447.44	\$461.22
2 Yard, 6x a week	\$533.72	\$550.16
3 Yard, 1x a week	\$122.34	\$126.11
3 Yard, 2x a week	\$244.68	\$252.22
3 Yard, 3x a week	\$358.10	\$369.13
3 Yard, 4x a week	\$471.55	\$486.07
3 Yard, 5x a week	\$584.97	\$602.99
3 Yard, 6x a week	\$698.42	\$719.93
4 Yard, 1x a week	\$163.70	\$168.74
4 Yard, 2x a week	\$327.39	\$337.47
4 Yard, 3x a week	\$478.65	\$493.39
4 Yard, 4x a week	\$631.68	\$651.14
4 Yard, 5x a week	\$782.94	\$807.05
4 Yard, 6x a week	\$934.20	\$962.97
6 Yard, 1x a week	\$230.44	\$237.54
6 Yard, 2x a week	\$460.90	\$475.10
6 Yard, 3x a week	\$675.33	\$696.13
6 Yard, 4x a week	\$888.00	\$915.35
6 Yard, 5x a week	\$1,102.46	\$1,136.42
6 Yard, 6x a week	\$1,315.12	\$1,355.63

## ROLL-OFF SERVICES:

	Current Monthly Rate	2019-20* New Rate
<b>Temp Roll-Off Service:</b>		
40 Yard with 4 tons	\$407.85	\$420.41
Compactor - plus landfill tipping fee	\$289.03	\$297.93
40 Yard Permanent plus landfill tipping fees	\$223.89	\$230.79
10 Yard Permanent plus tipping fee	\$223.89	\$230.79
Roll-Off Recycle/per load	\$223.89	\$230.79

	Current Monthly Rate	2019-20* New Rate
<b>Other Roll-Off Fees:</b>		
Delivery/Relocate/Trip Charge	\$81.72	\$84.24
Minimum Pull Fee (1 per month)	\$223.89	\$230.79
Industrial Set-up Fee	\$19.00	\$19.59

	Current Monthly Rate	2019-20* New Rate
<b>Commercial Compactors:</b>		
2 Yard, 1x a week	\$129.45	\$133.44
2 Yard, 2x a week	\$258.89	\$266.86
2 Yard, 3x a week	\$381.23	\$392.97
2 Yard, 4x a week	\$505.33	\$520.89
2 Yard, 5x a week	\$627.67	\$647.00
2 Yard, 6x a week	\$749.99	\$773.09
3 Yard, 1x a week	\$176.41	\$181.84
3 Yard, 2x a week	\$352.82	\$363.69
3 Yard, 3x a week	\$520.32	\$536.95
3 Yard, 4x a week	\$687.82	\$709.00
3 Yard, 5x a week	\$855.30	\$881.64
3 Yard, 6x a week	\$1,022.83	\$1,054.33
4 Yard, 1x a week	\$235.79	\$243.05
4 Yard, 2x a week	\$471.57	\$486.09
4 Yard, 3x a week	\$694.92	\$716.32
4 Yard, 4x a week	\$920.04	\$948.38
4 Yard, 5x a week	\$1,143.40	\$1,178.62
4 Yard, 6x a week	\$1,366.75	\$1,408.85
6 Yard, 1x a week	\$338.58	\$349.01
6 Yard, 2x a week	\$677.14	\$698.00
6 Yard, 3x a week	\$999.73	\$1,030.52
6 Yard, 4x a week	\$1,320.55	\$1,361.22
6 Yard, 5x a week	\$1,643.14	\$1,693.75
6 Yard, 6x a week	\$1,963.93	\$2,024.42

	Current Monthly Rate	2019-20* New Rate
<b>Commercial Recycle Service:</b>		
2 Yard, 1x a week	\$86.96	\$89.64
2 Yard, 2x a week	\$173.92	\$179.28
3 Yard, 1x a week	\$111.32	\$114.75
3 Yard, 2x a week	\$222.64	\$229.50
4 Yard, 1x a week	\$147.86	\$152.41
4 Yard, 2x a week	\$295.72	\$304.83
6 Yard, 1x a week	\$191.34	\$197.23
6 Yard, 2x a week	\$382.68	\$394.47
Extra Pick Up - Recycle	\$64.54	\$66.53
Contamination Fee	\$64.54	\$67.00

	Current Monthly Rate	2019-20* New Rate
<b>Commercial Organics Service</b>		
64 Gallon, 1x a week	\$47.05	\$48.50
64 Gallon, 2x a week	\$94.11	\$97.01
64 Gallon, 3x a week	\$141.16	\$145.51
64 Gallon, 4x a week	\$188.22	\$194.02
64 Gallon, 5x a week	\$235.26	\$242.51
64 Gallon, 6x a week	\$282.32	\$291.02
2 Yard, 1x a week	\$263.27	\$271.38
2 Yard, 2x a week	\$526.55	\$542.77
2 Yard, 3x a week	\$789.87	\$814.20
2 Yard, 4x a week	\$1,053.15	\$1,085.59
2 Yard, 5x a week	\$1,316.41	\$1,356.96
2 Yard, 6x a week	\$1,579.70	\$1,628.35

	Current Monthly Rate	2019-20* New Rate
<b>Other Commercial Fees:</b>		
Extra Pick Up - Trash	\$64.54	\$66.53
Lost or Stolen Bin	\$328.80	\$338.93
Burned Bin	\$184.12	\$189.79
Bin Overage Fee	\$49.27	\$59.27
Temporary 3 Yard - one month	\$220.71	\$227.51
Temporary 3 Yard - 7 day	\$135.28	\$139.45
Locking Lids	\$15.78	\$16.27
Haul or Call Fee	\$30.11	\$31.04
Commercial Set-up Fee	\$19.00	\$19.59
Bin Exchange	\$54.19	\$55.86
Replacement Lock	\$32.88	\$33.89
Replacement key	\$6.58	\$6.78
Pull-out service per bin 16-35 feet	\$15.51	\$15.99
Pull-out service per bin 36-50 feet	\$22.75	\$23.45
Pull-out service per bin over 51 feet	\$29.99	\$30.91
Return to Service	\$25.86	\$26.66

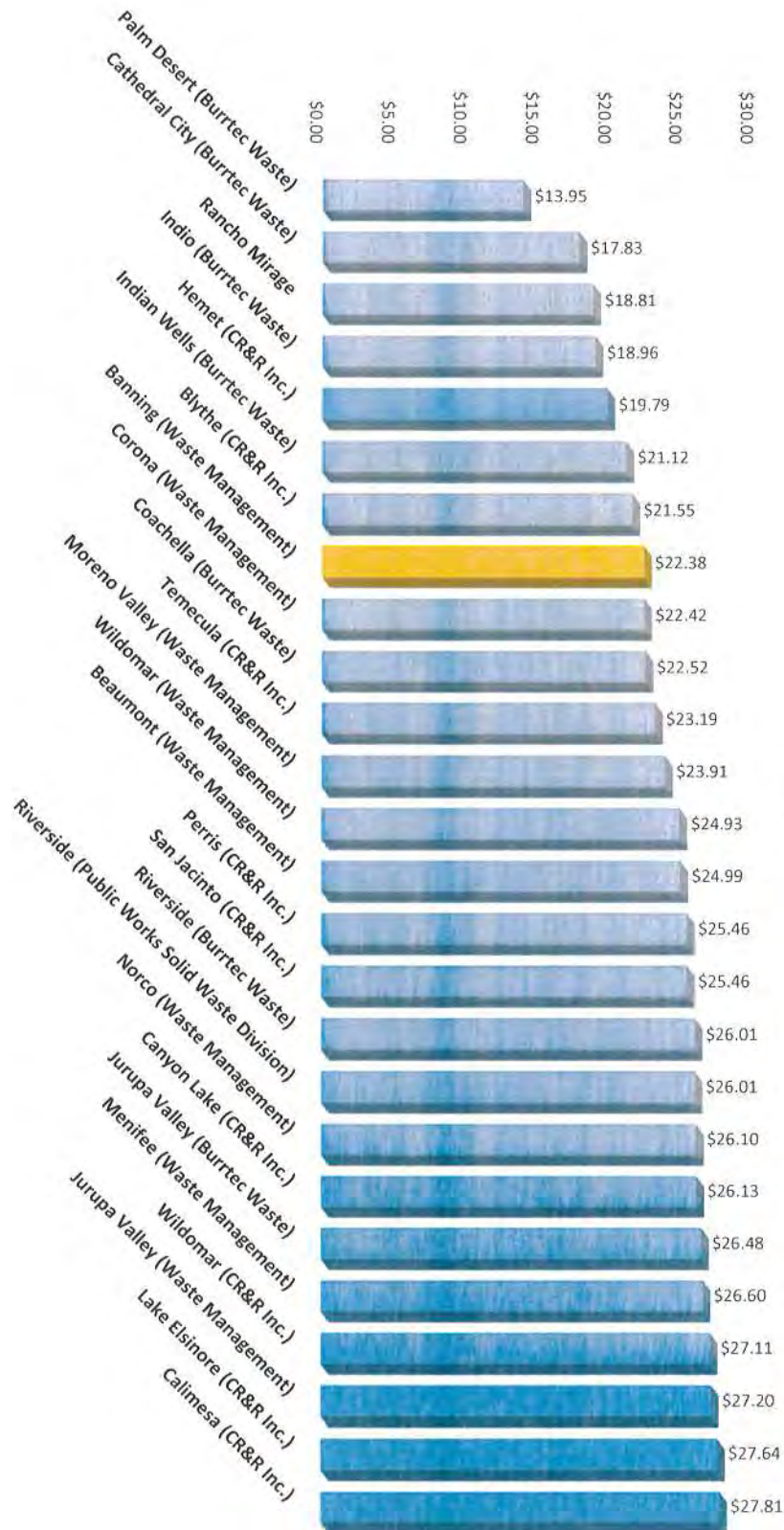
\*To be adjusted yearly for 5 years in accordance with the formula on the Notice of Public Hearing to which this schedule is attached

# ATTACHMENT 4

(Rate Comparison)

# RATE COMPARISON

Residential Monthly Rates  
2018





**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**



## CITY OF BANNING CITY COUNCIL REPORT

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**PREPARED BY:** Art Vela, Director of Public Works  
Holly Stuart, Management Analyst

**MEETING DATE:** June 11, 2019

**SUBJECT:** Adopt Resolution, Approving the Fourth Amendment to Custodial Services Agreement with Merchants Building Maintenance, LLC of Pomona, California for Fiscal Year 2019/2020 in the Amount of \$76,769.24

---

### **RECOMMENDED ACTION:**

Adopt Resolution:

1. Approving the Fourth Amendment to the Contractual Services Agreement with Merchants Building Maintenance, LLC for a not-to-exceed total of \$76,769.23 for Fiscal Year 2019/2020.
2. Authorizing the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the Fourth Amendment to the Agreement with Merchants Building Maintenance, LLC.
3. Authorizing the City Manager or his designee to execute Fourth Amendment to the Agreement with Merchants Building Maintenance, LLC.
4. Authorizing the Deputy City Clerk to certify to the adoption of this Resolution and shall cause the certified resolution to be filed in the book of original resolutions.

### **BACKGROUND:**

A Request for Proposals (RFP) was published in October of 2015. On February 9, 2016, City Council approved Resolution 2016-04, awarding an agreement for custodial services to Merchants Building Maintenance, LLC in the amount of \$79,243.10. The original agreement was for a fifteen (15) month period ending June 30, 2017. Under the approval

of Resolution 2016-04, the agreement has a renewal option for an additional three (3) single years upon annual review and approval by City Council with extension and services terminating no later than June 30, 2020.

Amendment No. 1 was processed reducing the scope of services and compensation related to the removal of a service location. At the same time, Amendment No. 1 also addressed 2017 California Minimum Wage increase requirements and increased compensation for the remaining locations being serviced.

On May 23, 2017 under Resolution 2017-52, City Council renewed the agreement for an additional one year with the option remaining to renew the agreement for two (2) additional single years. The renewal was processed as Amendment No. 2.

On May 28, 2018 under Resolution 2018-54, City Council approved the Third Amendment to the agreement extending the service period to June 30, 2019 and leaving an option to extend the contract for a final year.

At this time, staff reviewed the custodial services agreement and proposes an extension of the term to June 30, 2020 as allowed per the agreement. The proposed Fourth Amendment with Merchants Building Maintenance, LLC shall provide complete custodial services including all labor, tools materials and equipment necessary to perform services for the sites described below.

	DESCR.	LOCATION	ESTIMATED CLEANING SQUARE FOOTAGE	DAYS PER WEEK	QUANT.	MONTHLY /QRTLY RATE	ANNUAL TOTAL
A.	Banning City Hall (Civic Center)	99 E. Ramsey St.	20,600	5	12 Months	\$2,039.53	\$24,474.36
B.	City Yard	176 E. Lincoln St.	5,400	5	12 Months	\$477.74	\$5,732.88
C.	Corporate Yard Warehouse	176 E. Lincoln St.	3,430	4	12 Months	\$421.22	\$5,054.64
D.	Banning Police Station	125 E. Ramsey St.	28,000	5	12 Months	\$2,660.52	\$31,926.24
E.	Fleet Maint. Office	176 E. Lincoln St.	620	5	12 Months	\$152.65	\$1,831.80
F.	Water Shop	3333 Bluff Rd.	1,000	3	12 Months	\$315.46	\$3,785.52

G.	Community /Senior Center	789 N. San Gorgonio	Carpet & Window Cleaning Only		Quarterly	\$	\$1,963.79
H.	As Needed Services	TBD	N/A		TBD	TBD	\$2,000.00
	<b>Total</b>						<b>\$76,769.24</b>

**JUSTIFICATION:**

The Public Works Department does not have the required staff needed to provide custodial maintenance for the identified City facilities; therefore, it is necessary to retain a custodial service provider for these services.

Currently, Merchants Building Maintenance, LLC provides the City with an acceptable level of service at affordable rates; therefore, staff recommends the approval of the Fourth Amendment. If approved, the Fourth Amendment will be the final amendment; staff will solicit new proposal from vendors prior to June 30, 2020.

**FISCAL IMPACT:**

The proposed amended amount of \$76,769.23 will be funded by Fiscal Year 2020 operating budgets of Building Maintenance (\$40,879.20), Police Department (\$31,926.24) and Community Services including Recreation, Senior Center and Transit Divisions (\$1,963.79) with an additional \$2,000 for services as needed to be allocated by departmental operating budgets at the time additional services are deemed necessary.

**ALTERNATIVES:**

Do not approve as presented and discontinue services. If requested, staff could proceed with a new RFP to obtain the required services. With this option, there would be an interruption in services.

**ATTACHMENTS:**

1. Resolution 2019-\_\_\_\_\_
2. Draft Fourth Amendment

Approved by:



Douglas Schulze  
City Manager

# ATTACHMENT 1

(Resolution 2019-\_\_\_\_)



## RESOLUTION 2019-\_\_\_\_

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE FOURTH AMENDMENT WITH MERCHANTS BUILDING MAINTENANCE, LLC OF POMONA, CALIFORNIA FOR FISCAL YEAR 2019/2020 IN THE AMOUNT OF \$76,769.24**

**WHEREAS**, in October of 2015 staff solicited proposals from qualified companies to provide custodial services for City facilities; and

**WHEREAS**, on February 9, 2016, City Council approved Resolution 2016-04, awarding an agreement ("Original Agreement") for custodial services to Merchants Building Maintenance, LLC; and

**WHEREAS**, the Original Agreement was for a fifteen (15) month period ending June 30, 2017 and under the approval of Resolution 2016-07, with the approval of Council, services may be reviewed and renewed annually through June 30, 2020; and

**WHEREAS**, the Original Agreement was amended in order to reduce the scope of services and compensation for the removal of a service location while at the same time, increasing the compensation for the remaining service locations to address 2017 California Minimum Wage increase requirements ("Amendment No. 1"); and

**WHEREAS**, on May 23, 2017, City Council approved Resolution 2017-52 renewing the agreement for an additional one-year period ending June 30, 2018 with the option remaining to renew the agreement for two (2) additional single years with Council's approval ("Amendment No. 2"); and

**WHEREAS**, on May 28, 2018 under Resolution 2018-54, City Council approved the Third Amendment to the agreement extending the service period to June 30, 2019 and leaving an option to extend the contract for a final year (Amendment No. 3"); and

**WHEREAS**, under the Fourth Amendment, Merchants Building Maintenance, LLC shall provide complete custodial services including all labor, tools materials and equipment necessary to perform services for City Hall, Banning Police Station, City Yard, Corporate Warehouse, Community Services and the Fleet and Water Shops; and

**WHEREAS**, under the Fourth Amendment, the term of the Agreement will be extended to June 30, 2020 for an amount not to exceed \$76,769.24; and

**WHEREAS**, the amount of \$76,769.24 as itemized in Amendment No. 4 will be funded by the Fiscal Year 2020 operating budgets of Building Maintenance (\$40,879.20), Police Department (\$31,926.24) and Community Services (\$1,963.80) with an additional \$2,000 for services as needed to be allocated by departmental operating budgets at the time additional services are deemed necessary.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning as follows:

**SECTION 1.** The Banning City Council adopts Resolution approving Amendment No. 4 to increase compensation and extend the agreement term for custodial services in agreement with Merchants Building Maintenance, LLC of Pomona, California for Fiscal Year 2019/2020 in the amount of \$76,769.24.

**SECTION 2.** The City Manager or his designee is authorized to make necessary budget adjustments, appropriations and transfers related to Amendment No. 4.

**SECTION 3.** Accordingly, the City Council hereby authorizes and directs the City Manager or his designee to execute Amendment No. 4 to the Agreement.

**SECTION 4.** The City Clerk shall certify to the adoption of this Resolution and shall cause a certified resolution to be filed in the book of original resolutions.

**PASSED, APPROVED AND ADOPTED** this 11<sup>th</sup> day of June, 2019.

\_\_\_\_\_  
Arthur L. Welch, Mayor  
City of Banning

**ATTEST:**

\_\_\_\_\_  
Daryl Betancur, Deputy City Clerk  
City of Banning

**APPROVED AS TO FORM AND  
LEGAL CONTENT:**

\_\_\_\_\_  
Kevin G. Ennis, City Attorney  
Richards, Watson & Gershon



**CERTIFICATION:**

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-\_\_\_\_\_, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 11<sup>th</sup> day of June, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Daryl Betancur, Deputy City Clerk  
City of Banning, California

# **ATTACHMENT 2**

**(Draft Fourth Amendment)**

**AMENDMENT NO. 4 TO THE AGREEMENT FOR CONTRACTUAL  
SERVICES BETWEEN THE CITY OF BANNING AND MERCHANTS  
BUILDING MAINTENANCE, LLC**

**THIS FOURTH AMENDMENT TO THE AGREEMENT FOR CONTRACTUAL SERVICES** ("Amendment No. 4") by and between the **CITY OF BANNING** ("City") and **MERCHANTS BUILDING MAINTENANCE, LLC**, ("Contractor") (collectively, the "Parties") is effective as of the \_\_\_\_ day of \_\_\_\_\_, 2019.

**RECITALS**

A. City and Contractor entered into that certain Agreement for Contractual Services dated February 10, 2016 ("Original Agreement") whereby Contractor agreed to provide Complete Custodial Services.

B. On January 1, 2017, the City and Contractor amended the Original Agreement to remove the Community Center/Senior Center Custodial Services from the scope of work in the Original Agreement and to increase compensation reflecting the 2017 California Minimum Wage increase (Amendment No. 1).

C. On July 1, 2017, the City and Contractor amended the Agreement to extend the Original Agreement term to June 30, 2018 and include additional compensation for the extended Agreement term in an annual amount not-to-exceed \$63,277.00 (Amendment No. 2). The Original Agreement, as amended by Amendment No. 1 and Amendment No. 2, is referred to herein as the "Agreement."

D. On May 22, 2018 the City and Contractor amended the Agreement to extend the contract term to June 30, 2019; to include the Quarterly carpet and window cleaning at the Community/Senior Center to the Scope of Work; and to include additional compensation for the extended contract term, additional services and to reflect the minimum wage rate increase in an annual amount not to exceed Seventy Thousand Six Hundred Ninety-Two Dollars and Ninety-Six Cents, (\$70,692.96).

E. City and Contractor now desire to amend the Agreement to extend the contract term to June 30, 2020 and to include additional compensation for the extended contract term in an annual amount not to exceed Seventy-Six Thousand Seven Hundred Sixty-Nine Dollars and Twenty-Four Cents, (\$76,769.24).

NOW, THEREFORE, in consideration of the Parties' performance of the promises, covenants, and conditions stated herein, the Parties hereby agree as follows:

**TERMS**

1. **Contract Changes.** The Agreement is amended as follows:

- (a) Section 2.1 of the Agreement related to compensation is hereby amended to provide that Contractor's total compensation, including reimbursement for actual expenses, shall not exceed Seventy-Six Thousand Seven Hundred Sixty-Nine Dollars and Twenty-Four Cents (\$76,769.24.) based upon completed and satisfactory performance of the terms of the Agreement.
- (b) Section 3.4 of the Agreement is amended to extend the term of the Agreement to June 30, 2020.

2. **Continuing Effect of Agreement.** Except as specifically amended by this Amendment No. 3, all other provisions of the Agreement and exhibits thereto shall remain in full force and effect.

3. **Affirmation of Agreement; Warranty Re Absence of Defaults.** City and Contractor each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each Party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each Party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

Contractor represents and warrants to City that, as of the date of this Amendment, City is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Contractor that, as of the date of this Amendment, Contractor is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

4. **Adequate Consideration.** The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

5. **Authority.** The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the Party entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

[SIGNATURES ON FOLLOWING PAGE]

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF BANNING

CONTRACTOR

Douglas Schulze, \_\_\_\_\_ Date \_\_\_\_\_  
City Manager

NAME: \_\_\_\_\_ DATE \_\_\_\_\_

TITLE: \_\_\_\_\_

NAME: \_\_\_\_\_ DATE \_\_\_\_\_  
TITLE: \_\_\_\_\_

ATTEST:

Daryl Betancur, Date  
Deputy City Clerk

Tax ID No.

APPROVED AS TO FORM:  
Richards, Watson & Gershon

Kevin G. Ennis, Esq., \_\_\_\_\_ Date \_\_\_\_\_  
City Attorney

**Two signatures are required if a corporation**

**NOTE: CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.**

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On \_\_\_\_\_, 2018 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

## OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	
<input type="checkbox"/>	CORPORATE OFFICER	
<input type="checkbox"/>	<div style="display: flex; justify-content: space-between;"> <div>           PARTNER(S)         </div> <div>           TITLE(S)         </div> </div> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> LIMITED  <input type="checkbox"/> GENERAL         </div> <div>           _____         </div> </div>	_____ TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/>	ATTORNEY-IN-FACT	
<input type="checkbox"/>	TRUSTEE(S)	
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	
<input type="checkbox"/>	OTHER _____	
<b>SIGNER IS REPRESENTING:</b> (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____		_____ NUMBER OF PAGES
		_____ DATE OF DOCUMENT
		_____ SIGNER(S) OTHER THAN NAMED ABOVE

**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**





**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**PREPARED BY:** Art Vela, Director of Public Works  
Holly Stuart, Management Analyst

**MEETING DATE:** June 11, 2018

**SUBJECT:** Adopt Resolution, Approving the Fourth Amendment to the Landscape Maintenance Services Agreement for City Facilities with Artistic Maintenance, Inc. of Lake Forest, California for Fiscal year 2019/20 in the Amount of \$52,044

---

**RECOMMENDED ACTION:**

Adopt Resolution:

1. Approving the Fourth Amendment to the Landscape Maintenance Services Agreement for City Facilities with Artistic Maintenance, Inc. of Lake Forest California for Fiscal year 2019/2020 in the amount of \$52,044.
2. Authorizing the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the Fourth Amendment to the Landscape Maintenance Services Agreement for City Facilities with Artistic Maintenance, Inc.
3. Authorizing the City Manager or his designee to execute the Fourth Amendment to the Landscape Maintenance Services Agreement for City Facilities with Artistic Maintenance, Inc.
4. Authorizing the City Clerk to certify the adoption of this resolution and to have said resolution filed in the book of original resolutions.

**BACKGROUND:**

On September 1, 2015 staff solicited proposals from qualified companies to provide landscape maintenance services for public properties throughout the City. The scope of work for these services includes turf management; shrub bed maintenance; tree care and

pruning; fertilization; environmental weed and pest control; irrigation equipment maintenance and operations.

On November 10, 2015 City Council approved Resolution 2015-95, "Approving a Landscape Maintenance Services Agreement with Artistic Maintenance, Inc. of Lake Forest, California". On June 14, 2016, upon annual review of services and within the renewal option, City Council approved Resolution 2016-40 extending the agreement for FY 2016/2017 through June 30, 2017. On May 9, 2017, Council approved the Second Amendment with Artistic Maintenance under Resolution 2017-47 in the amount of \$46,180 exercising the renewal option and extending the agreement to June 30, 2018. Most Recently, on May 8, 2018 under Resolution 2018-51, City Council approved the Third Amendment to the agreement with Artistic extending the agreement to June 30, 2019.

The services provided to the City include the following locations and rates:

	DESCRIPTION	LOCATION	QUANTITY	MONTHLY RATE	TOTAL
A.	Ramsey Street Medians	Highland Springs Ave. to Sunset Ave.	12 Months	\$1,530	\$18,360
B.	City Hall (building and parking lot)	99 E. Ramsey St.	12 Months	\$714	\$8,568
C.	Police Station	125 E. Ramsey St.	12 Months	\$280	\$3,360
D.	Police Station Northeast Parking Lot	125 E. Ramsey St.	12 Months	\$168	\$2,016
E.	Fire Station Building	5261 W. Wilson St.	12 Months	\$153	\$1,836
F.	Community & Senior Center	769 & 789 San Geronio Ave.	12 Months	\$587	\$7,044
G.	Aquatic Center	749 N. San Geronio Ave.	12 Months	\$280	\$3,360
H.	As Needed Services	TBD	TBD	TBD	\$7,500
	Total			\$3,712	\$52,044

The total includes an annual increase of \$864 in the monthly services provided by Artistic and an increase of \$5,000 in the "As Needed Services" budget that will be utilized for plant replacement and irrigation repairs.

**JUSTIFICATION:**

The Public Works Department does not have the required field staff needed to maintain the identified landscape areas, therefore it is necessary to retain a landscape maintenance contractor to provide these services.

Artistic Maintenance, Inc. has continued to provide the City with affordable services at an acceptable level at City facilities since 2014; therefore, staff recommends the renewal of the landscape maintenance agreement for Fiscal Year 2019/2020.

If approved, this will be the fifth year Artistic Maintenance Inc. will provide the landscape maintenance services and will be the final term extension allowed under the current agreement.

**FISCAL IMPACT:**

The Landscape Maintenance Services Agreement is for an amount "not to exceed" \$47,044. The agreement will be funded by the following operational budgets:

ITEM	ACCOUNT NO.	DESCRIPTION	AMOUNT
1.	001-2200-421.23-29	Contractual Services/Landscape Maintenance; Police	\$7,212
2.	001-3200-412.23-29	Contractual Services/Landscape Maintenance; Building Maintenance	\$8,568
3.	001-4000-461.23-29	Contractual Services/Landscape Maintenance; Recreation	\$3,522
4.	001-4010-461.23-29	Contractual Services/Landscape Maintenance; Aquatics	\$3,360
5.	001-4050-462.23-29	Contractual Services/Landscape Maintenance; Senior Center	\$3,522
6.	100-4900-431.23-29	Contractual Services/Landscape Maintenance; Street	\$18,360
7.	TBD	Additional Services as Needed for miscellaneous repairs	\$7,500
		<b>TOTAL</b>	<b>\$52,044</b>

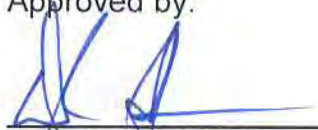
**ALTERNATIVE:**

City Council may direct staff to not approve as presented and discontinue services. If requested, staff could proceed with a new RFP to obtain the required services. With this option, there would be a gap in service as it would take some time to process. The City does not have the staff resources to perform the landscape maintenance tasks.

**ATTACHMENTS:**

1. Resolution 2019-\_\_\_\_
2. Draft Fourth Amendment

Approved by:



---

Douglas Schulze  
City Manager

# ATTACHMENT 1

(Resolution 2019-\_\_\_\_)

## RESOLUTION 2019-\_\_\_\_\_

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE FOURTH AMENDMENT TO THE LANDSCAPE MAINTENANCE SERVICES AGREEMENT FOR CITY FACILITIES WITH ARTISTIC MAINTENANCE, INC., OF LAKE FOREST, CALIFORNIA FOR FISCAL YEAR 2019/2020 IN THE AMOUNT OF \$52,044**

**WHEREAS**, on September 1, 2015, staff solicited proposals from qualified companies to provide landscape maintenance services for public properties throughout the City; and

**WHEREAS**, the scope of work for these services includes turf management; shrub bed maintenance; tree care and pruning; fertilization; environmental weed and pest control; irrigation equipment maintenance and operations; and additional repairs and replacements as needed, for all locations identified in the Request for Proposals; and

**WHEREAS**, on November 10, 2015, City Council approved Resolution 2015-95 approving an Agreement with Artistic Maintenance Inc. for landscape maintenance services for public properties throughout the City; and

**WHEREAS**, on June 14, 2016, City Council approved Resolution 2016-40, approving the First Amendment to the Agreement; and

**WHEREAS**, on May 9, 2017, City Council approved Resolution 2017-47, approving the Second Amendment to the Agreement; and

**WHEREAS**, on May 8, 2018 under Resolution 2018-51, City Council approved the Third Amendment extending the term to June 30, 2019; and

**WHEREAS**, Artistic Maintenance, Inc. has continued to provide the City with affordable service at an acceptable level; therefore, under approval of this Resolution, the City intends to approve Amendment No. 4 to Agreement for Landscape Maintenance Services (formerly known as the Agreement for Contract Services, in Amendment No. 2) in the amount of \$52,044; and

**WHEREAS**, with this approval this will be the fifth year Artistic Maintenance, Inc. will provide landscape maintenance services and will be the final term extension under the current agreement.

**WHEREAS**, funding is available in the operational budgets of the Police, Streets, Building Maintenance, Community Center, and Senior Center Division accounts for the Fiscal Year 2019/2020 Landscape Maintenance Services Agreement in the amount of "not to exceed" \$52,044.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning as follows:

SECTION 1. The Banning City Council adopts this Resolution approving Amendment No. 4 to the Agreement for Landscape Maintenance Services with Artistic Maintenance, Inc., a California corporation in the amount of "not to exceed" \$52,044 for Fiscal Year 2019/2020.

SECTION 2. The City Manager or her designee is authorized to make necessary budget adjustments, appropriations and transfers related to this amendment.

SECTION 3. The City Manager or her designee is authorized to execute Amendment No. 4 to the Agreement for Landscape Maintenance Services with Artistic Maintenance, Inc., a California corporation.

SECTION 4. The City Clerk shall certify to the adoption of this Resolution and shall cause a certified resolution to be filed in the book of original resolutions.

**PASSED, APPROVED AND ADOPTED** this 11<sup>th</sup> day of June, 2019.

\_\_\_\_\_  
Arthur L. Welch, Mayor  
City of Banning

**ATTEST:**

\_\_\_\_\_  
Daryl Betancur, Deputy City Clerk  
City of Banning

**APPROVED AS TO FORM AND  
LEGAL CONTENT:**

\_\_\_\_\_  
Kevin G. Ennis, City Attorney  
Richards, Watson & Gershon



**CERTIFICATION:**

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-\_\_\_\_\_, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 11<sup>th</sup> day of June, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Daryl Betancur, Deputy City Clerk  
City of Banning, California

# ATTACHMENT 2

(Draft Fourth Amendment)

**AMENDMENT NO. 4 TO AGREEMENT FOR LANDSCAPE MAINTENANCE SERVICES (C00066) BETWEEN THE CITY OF BANNING, CALIFORNIA AND ARTISTIC MAINTENANCE, INC.**

**THIS AMENDMENT TO THE AGREEMENT FOR LANDSCAPE MAINTENANCE SERVICES** ("Amendment") by and between the **CITY OF BANNING** ("CITY") and **ARTISTIC MAINTENANCE, INC.**, a California Corporation ("Contractor") is effective as of the \_\_\_\_ day of \_\_\_\_\_, 2019.

**RECITALS**

A. On November 10, 2015, CITY adopted City Council Resolution No. 2015-95, which authorized CITY and Contractor to enter into that certain Agreement for Construction Services dated October 28, 2015 ("Agreement"). The Agreement provided that Contractor would to provide those services specified in the Scope of Work attached to the Agreement as Exhibit "A" (hereafter, "Landscape Maintenance Services"). Pursuant to Section 3.5 of the Agreement, CITY had the option to renew the Agreement for an additional four (4) terms of one (1) year each.

B. On June 14, 2016, CITY exercised the first option to renew the Agreement for an additional one-year term, ending on June 30, 2017, by adopting City Council Resolution No. 2016-40 and by entering into that certain Amendment No. 1, dated July 1, 2016 ("Amendment No. 1").

C. On May 9, 2017, CITY exercised the second option to renew the Agreement for an additional one-year term, ending on June 30, 2018, by adopting City Council Resolution No. 2017-47 and by entering into that certain Amendment No. 2, dated July 1, 2017 ("Amendment No. 2").

D. On May 8, 2018, CITY adopted City Council Resolution No. 2018-51, which authorized the exercise of the third option to renew the Agreement for an additional one-year term, ending on June 30, 2019, and the increase in compensation for services provided under the Agreement.

E. CITY and Contractor now desire to amend the Agreement to exercise the fourth option to renew the agreement for an additional one-year term ending on June 30, 2020 and include additional compensation for the extended contract term in an annual amount of Fifty-Two Thousand and Forty-Four Dollars (\$52,044.00).

**TERMS**

1. **Contract Changes.** The Agreement is amended as follows:

(a) Section 2.1 of the Agreement is amended to provide that Consultant's total compensation for the period from July 1, 2019 through June 30, 2020 shall not exceed Fifty-Two Thousand and Forty-Four Dollars (\$52,044.00).

(b) Section 3.5, "Term" of the Agreement is hereby amended to exercise the fourth renewal option extending the contract period to June 30, 2020.

2. **Continuing Effect of Agreement.** Except as amended by this Agreement, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended by this Amendment to the Agreement.

3. **Affirmation of Agreement; Warranty Re Absence of Defaults.** CITY and Contractor each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

Contractor represents and warrants to CITY that, as of the date of this Amendment, CITY is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

CITY represents and warrants to Contractor that, as of the date of this Amendment, Contractor is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

4. **Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

5. **Authority.** The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

[SIGNATURES ON FOLLOWING PAGE]

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF BANNING

CONTRACTOR

Douglas Schulze, \_\_\_\_\_ Date  
City Manager

NAME: \_\_\_\_\_ DATE \_\_\_\_\_

TITLE: \_\_\_\_\_

NAME: \_\_\_\_\_ DATE \_\_\_\_\_  
TITLE: \_\_\_\_\_

ATTEST:

Daryl Betancur, \_\_\_\_\_ Date \_\_\_\_\_  
Deputy City Clerk

Tax ID No.

APPROVED AS TO FORM:  
Richards, Watson & Gershon

Kevin G. Ennis, Esq., City Attorney	Date
--	------

**Two signatures are required if a corporation**

**NOTE: CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.**

# **CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On \_\_\_\_\_, 2019 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

## **OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

- CAPACITY CLAIMED BY SIGNER**
- ☐ INDIVIDUAL
- ☐ CORPORATE OFFICER

## **DESCRIPTION OF ATTACHED DOCUMENT**

- ☐ TITLE(S)  
PARTNER(S) ☐ LIMITED  
☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER \_\_\_\_\_

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

**SIGNER IS REPRESENTING:**  
(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
DATE OF DOCUMENT

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**





**CITY OF BANNING  
CONSENT ITEM**

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**PREPARED BY:** Art Vela, Public Works Director/City Engineer

**MEETING DATE:** June 11, 2019

**SUBJECT:** Adopt Resolution, Awarding a Professional Services Agreement to Artistic Maintenance, Inc. for the Operation and Maintenance of Landscape Maintenance District No. 1 for Fiscal Year 2019/2020 in the Amount of \$78,150.

---

**RECOMMENDED ACTION:**

Staff recommends that the City Council adopt Resolution:

1. Awarding a Professional Services Agreement for the Operation and Maintenance of Landscape Maintenance District (LMD) No. 1 to Artistic Maintenance, Inc. in the amount of \$5,262.50/month (\$63,150/year) and an additional \$15,000 for miscellaneous irrigation repairs and landscape replacement bringing the total contract amount to a "not to exceed" amount of \$78,150.
2. Authorizing the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the Professional Services Agreement for the Operation and Maintenance of Landscape Maintenance District No. 1.
3. Authorizing the City Manager or his designee to execute the Professional Services Agreement with Artistic Maintenance of Lake Forest, California in the amount of \$78,150.
4. Authorizing the City Clerk to certify the adoption of this resolution and to have said resolution filed in the book of original resolutions.

**BACKGROUND:**

LMD No. 1 in the City of Banning was established through the adoption of Resolution No. 1990-59 on August 14, 1990 (9 tracts), with another, Tract No. 22913 being annexed into the District in 1992. There are currently Four (4) Zones and 1,015 assessment units. An additional five tracts and three tentative tracts were annexed (Annexation No. 1) into LMD No. 1 when the City Council approved Resolution No. 2005-36 on May 10, 2005. A map displaying the District is attached as Attachment 2.

LMD No. 1 currently consists of sixteen (16) accepted tracts: Tract Nos. 21882, 22810, 22811, 22913, 23446 (including the median on Highland Home Road), 23598, 28252, 29721, 30186, 30222 (including Richard Sanchez Park), 30793, 31833, 31834, 31835, 32109, and 30906. Tract No. 36969 has not been accepted thus far.

The purpose of LMD No. 1 is for the maintenance and servicing of landscape medians and parkways, perimeter strips and backup walls, landscaped hillsides with high visibility, side slopes adjacent to sidewalks, retention basins, and the irrigation of the above facilities. LMD No. 1, by special benefit assessments, provides funding for the servicing and maintenance of designated landscape areas within the City of Banning. A map displaying LMD No. 1 and boundaries of each tract is attached herewith as Attachment 2.

The scope of work includes providing all of the labor, tools, materials, and equipment necessary to provide landscape maintenance services of LMD No.1. This includes performing weekly maintenance and inspection, checking the operation of all irrigation systems and identifying required repairs and, if necessary, the labor for replacing trees, flowers or shrubs within landscaped areas that are maintained under the contract.

The detailed scope of work is outlined in Attachment 3, the Request for Proposals (RFP) and in the attached recommended contractor's proposal (Attachment 4).

On April 12, 2019, staff released a RFP through the PlanetBids program notifying qualified firms of the opportunity to provide proposals, RFP 19-030, "Operation and Maintenance of LMD No. 1". The deadline to submit proposals was May 7, 2019 and two (2) firms responded with submittals.

An evaluation committee consisting of three (3) City staff members, evaluated the two (2) proposals that were received based on price, experience and project understanding, approach (implementation plan) and methodology.

Listed below are the two (2) firms that submitted proposals in order of the total combined score received from the three (3) evaluators:

CONSULTANT	TOTAL SCORE
Artistic Maintenance, Inc.	283.0
Urban Habitat	208.8

Artistic Maintenance, Inc. is a reputable qualified firm that has successfully provided services to the City in the past and is the current contractor for the Operation and Maintenance of LMD No.1 and for the landscaping of City facilities.

If approved, the Contract Agreement is for a term of twelve (12) months (\$5,262.50/month; \$63,150.00/year) with the possibility of an option to renew for up to four (4) single additional years (for a total of five (5) single years) upon a satisfactory yearly review of the previously provided services. If approved, extensions to the Contract Agreement will terminate no later than June 30, 2024. Irrigation repairs, materials, tree, shrub, ground cover and plant material replacements are paid for as an added cost, separate from this contract. Thus, an additional \$15,000 is being added to the contract award.

#### **JUSTIFICATION:**

The Public Works Department does not have the required field staff needed to maintain the LMD No. 1 landscape areas, therefore it is necessary to retain a landscape maintenance contractor to provide these services.

Artistic Maintenance, Inc., of Lake Forest, California, has provided satisfactory landscape operation and maintenance services throughout their previous contract that was awarded in 2014 with four (4) contract renewals due to satisfactory performance.

#### **FISCAL IMPACT:**

Fund No. 111 (Landscape Maintenance Assessment District No.1) will be utilized to fund this contract for Fiscal Year 2019/2020 in the amount of "not to exceed" \$78,105. Account No. 111-4900-432-23.29 (Landscape Maintenance) in the amount of \$63,150 will fund the monthly operation and maintenance portion of the agreement and Account No. 111-4900-432-30.01 (Repair/Maintenance-Grounds/Fields) in the amount of \$15,000 will be used to fund miscellaneous operations related to irrigation repairs and landscaping replacement.

#### **ALTERNATIVES:**

1. Reject staff's recommendation. The Public Works Department currently does not have sufficient staff to maintain the LMD No. 1 landscape areas in house.
2. Reject staff's recommendation and direct staff to advertise a new RFP, although this would could cause delays in these services for processing a new RFP.

**ATTACHMENTS:**

1. Resolution 2019-\_\_\_\_\_
2. LMD No.1 Map
3. Request for Proposals (RFP)
4. Artistic Maintenance, Inc. Proposal dated May 7, 2019
5. Draft Professional Services Agreement

Approved by:



Douglas Schulze  
City Manager

# ***ATTACHMENT 1***

*(Resolution 2019-\_\_\_\_\_)*



## RESOLUTION NO. 2019-\_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AWARDED AN OPERATION AND MAINTENANCE CONTRACT TO ARTISTIC MAINTENANCE, INC. OF LAKE FOREST, CALIFORNIA, IN THE AMOUNT OF \$78,150 FOR FISCAL YEAR 2019/2020 FOR THE OPERATION AND MAINTENANCE SERVICES OF LANDSCAPE MAINTENANCE DISTRICT NO. 1**

**WHEREAS**, Landscape Maintenance District (LMD) No. 1 in the City of Banning was established through the adoption of Resolution No. 1990-59 on August 14, 1990 (9 tracts), with another Tract, No. 22913, being annexed into the District in 1992; and

**WHEREAS**, at its regularly scheduled meeting on May 10, 2005, the City Council adopted Resolution No. 2005-36, ordering the annexation of an additional five tracts and three tentative tracts (Annexation No. 1) to the City's LMD No. 1; and

**WHEREAS**, cost savings to the LMD fund will occur if the City retains the services of a contractor to provide the necessary operation and maintenance services for the proper upkeep of the LMD No.1; and

**WHEREAS**, on April 12, 2019, staff released a RFP through the PlanetBids program notifying qualified firms of the opportunity to provide proposals, RFP 19-030, "Operation and Maintenance of LMD No. 1" with proposals due on May 7, 2019; and

**WHEREAS**, an evaluation committee consisting of three (3) City staff members, evaluated the two (2) proposals that were received based on price, experience and project understanding in providing the scope of work; and

**WHEREAS**, Artistic Maintenance, Inc. had the highest combined score from the three evaluators and is a reputable qualified firm that has successfully provided services to the City in the past and is the current contractor providing these services and as a result, staff recommends the contract be awarded to Artistic Maintenance, Inc; and

**WHEREAS**, Account No. 111-4900-432-23.29 (Landscape Maintenance) in the amount of \$63,150 (\$5,262.50/month; \$63,150/year) will fund the monthly operation and maintenance portion of the agreement and Account No. 111-4900-432-30.01 (Repair/Maintenance-Grounds/Fields) in the amount of \$15,000 will be used to fund miscellaneous operations related to irrigation repairs and landscape replacement.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning as follows:

**SECTION 1.** The Banning City Council adopts Resolution 2019-XX, awarding an operation and maintenance services contract for Landscape Maintenance District No. 1 to Artistic Maintenance, Inc. of Lake Forest, California, in the amount of \$78,150 for FY 2019/20 with the option to renew for an additional four single years, subject to a Consumer Price Index increase adjustment and satisfactory performance, and all other bids are hereby rejected.

**SECTION 2.** The City Manager or his designee is authorized to make necessary budget adjustments, appropriations and transfers related to the Professional Services Agreement.

**SECTION 3.** The City Manager or his designee is authorized to execute the Professional Services Agreement as to form approved by the City Attorney

**SECTION 4.** The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

**PASSED, APPROVED AND ADOPTED** this 11<sup>th</sup> day of June 2019.

\_\_\_\_\_  
Arthur L. Welch, Mayor  
City of Banning

**ATTEST:**

\_\_\_\_\_  
Daryl Betancur, Deputy City Clerk  
City of Banning

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

\_\_\_\_\_  
Kevin G. Ennis, City Attorney  
Richards, Watson & Gershon



**CERTIFICATION:**

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-\_\_\_\_\_, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 11<sup>th</sup> day of June, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Daryl Betancur, Deputy City Clerk  
City of Banning, California

# ATTACHMENT 2

*(LMD No.1 Map)*

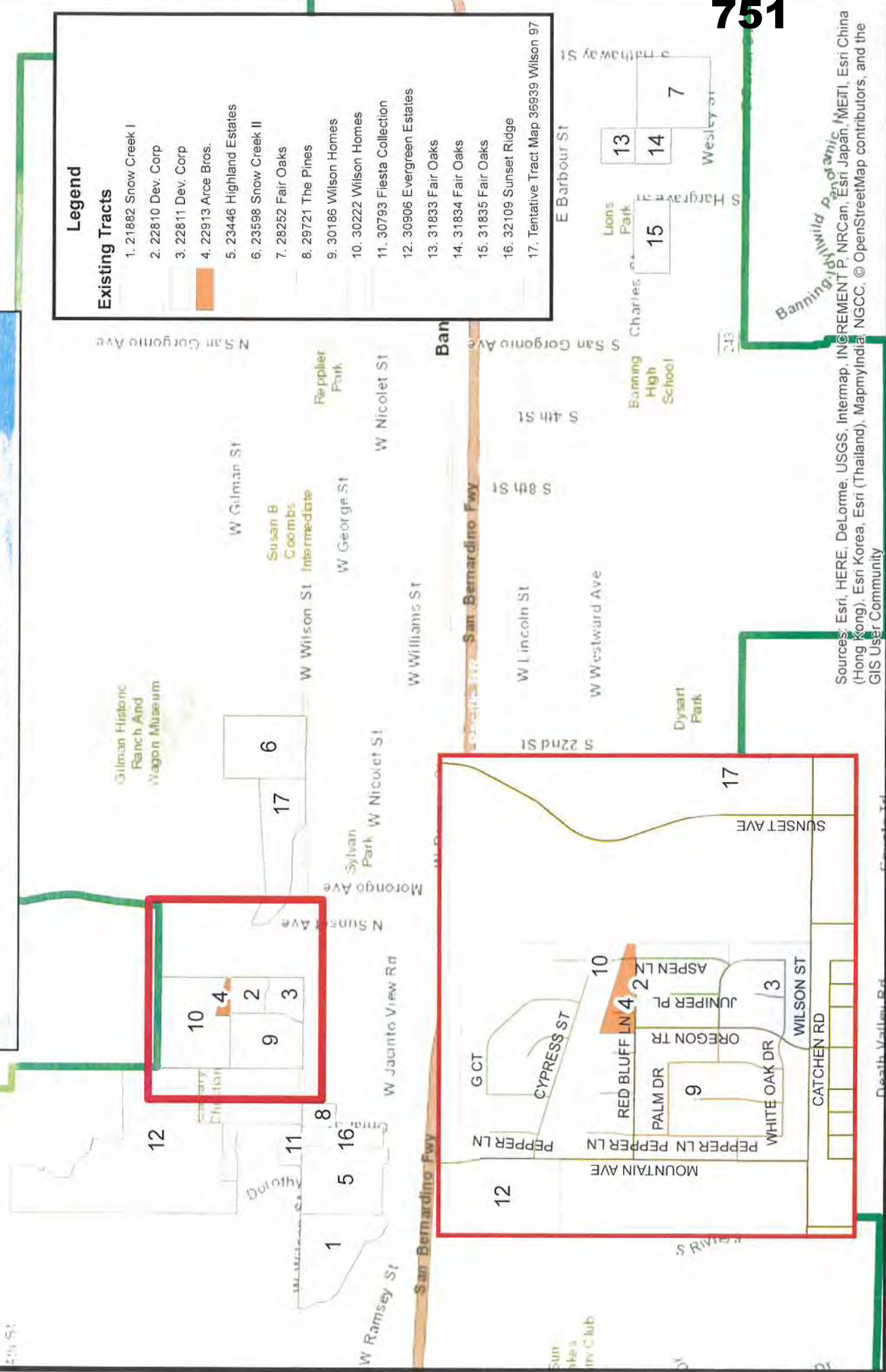
# Map of Landscape Maintenance District No. 1

2019-2020

## Legend

### Existing Tracts

1. 21882 Snow Creek I
2. 22810 Dev. Corp
3. 22811 Dev. Corp
4. 22913 Arce Bros.
5. 23446 Highland Estates
6. 23598 Snow Creek II
7. 28252 Fair Oaks
8. 29721 The Pines
9. 30186 Wilson Homes
10. 30222 Wilson Homes
11. 30793 Fiesta Collection
12. 30906 Evergreen Estates
13. 31833 Fair Oaks
14. 31834 Fair Oaks
15. 31835 Fair Oaks
16. 32109 Sunset Ridge
17. Tentative Tract Map 36939 Wilson 97



Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, MEIT, Esri China (Hong Kong), Esri Korea, Esri (Thailand), MapmyIndia, NGCC, © OpenStreetMap contributors, and the GIS User Community

# ATTACHMENT 3

*(Request for Proposals)*

**CITY OF BANNING**

**REQUEST FOR PROPOSALS (RFP)  
RFP No. 19-031**

**SPECIFICATIONS AND SCOPE OF SERVICES  
FOR THE OPERATION AND MAINTENANCE OF  
LANDSCAPE MAINTENANCE DISTRICT NO. 1**



**PREPARED BY:  
PUBLIC WORKS DEPARTMENT  
CITY OF BANNING**

**APRIL, 2019**

## SPECIFICATIONS AND SCOPE OF SERVICES

### OPERATION AND MAINTENANCE OF LANDSCAPE MAINTENANCE DISTRICT NO. 1

#### I. INTRODUCTION

The City of Banning is seeking proposals from qualified firms and wishes to retain the services of a firm to provide landscape maintenance services for its Landscape Maintenance District No. 1. The City is considering awarding a contract to begin on or about July 1, 2019, for a term of twelve (12) months with the possibility of an option to renew for up to four (4) single additional years upon a yearly review of the previously provided services. The City of Banning reserves the right to accept or reject any or all proposals, and not award a contract at all. Additionally, the City of Banning may elect to maintain all or some tracts, or portions thereof, in-house during the life of the contract. Therefore, the Scope of Services could be reduced at any time throughout the contract period at the City's discretion. **These Specifications and Scope of Services shall become part of the Contract Agreement.**

#### II. SCHEDULE OF EVENTS

The proposed schedule for selection, negotiation, and service contract initiation is shown below.

Event	Date	Time
Request for Proposals Released	04/12/2019	N/A
Mandatory Pre-Proposal Meeting	04/23/2019	10:00a.m. PDT
Final Questions Due	04/26/2019	Before 4:00pm PDT
Responses to Questions Released	05/01/2019	N/A
<b>Proposals Due</b>	<b>05/7/2019</b>	<b>Before 2:00pm PDT</b>
Interviews, If Needed	Week of 05/27/2019	To be determined
Tentative City Council Meeting to Consider Awarding Contract	06/11/2019	5:00pm
Estimated contract start date	07/01/2019	N/A

#### III. PROCESSING OF PROPOSALS

##### A. PREREQUISITES

Proposals will only be considered from Companies that meet the following prerequisites:

- Have at least five (5) years' of experience under a legally registered business name, in providing services of a similar type and scope as described in the Scope of Services ("Services"). Have not filed for bankruptcy under any business name over the past five (5) years.
- Have registered as a "Prospective Bidder" on the City's electronic Current Prospective Bidders List. Companies can register at:



<http://www.planetbids.com/portal/portal.cfm?CompanyID=33077>

- Once registered, Companies must download this RFP by clicking “Place eBid” under their name in order to appear on the Bidder’s List as a “Prospective Bidder.” Companies that fail to specifically download this RFP will not appear on the Bidders’ List and will be unable to participate or be considered for this RFP.
- All prospective Companies must attend the mandatory pre-proposal meeting on the date and time set forth in the schedule of events. **The Meeting will be held at the intersection of Wilson Street and Highland Home Road, Banning, CA 92220.** Attendance is mandatory at the pre-proposal meeting. The meeting will begin promptly at the time listed in the schedule. No admittance will be allowed once the meeting has begun. Proposals from prospective Proposers not in attendance at this mandatory meeting will not be considered.
- Company and/or its key personnel, shall hold a valid State of California **C-27 Landscape Contractor License**.
- Company shall have registered with the Department of Industrial Relations and any other required organizations.
- The Contractor shall obtain any necessary City Business License and maintain it as current for the term of the contract.
- Contractor must demonstrate the ability to provide necessary support services during the time of the contract.
- Contractor must provide a description of local resources available to provide emergency and backup resources

#### B. DELIVERY/SUBMISSION OF PROPOSALS

**The Final day for submission of proposals shall be on or before the due date indicated in the schedule of events section.**

Companies shall register on the City’s Electronic Bidding System, <http://www.planetbids.com/portal/portal.cfm?CompanyID=33077>. Once registered, Companies must **download the RFP by clicking “Place eBid” while logged in** under their own name and identification number to appear on the Current Prospective Bidders List as a “Prospective Bidder.” Companies that fail to download the RFP by clicking “Place eBid” will not appear on the Current Prospective Bidders List and their proposals will be considered non-responsive. If a Company is unable to register or download the RFP from the bidding website, a representative may contact Planet Bids at (818) 992-1771.

All proposal documents and supplementary documents must be uploaded using the City’s bidding website prior to event date and time as instructed in this solicitation. Once file(s) have



been uploaded and the Submission Status shows as "Submitted" the submission is complete. At that point respondents will receive an email confirmation from the bidding website.

The City reserves the right to reject any and all proposals and to waive information and minor irregularities in any proposal received.

Acceptance of Terms and Conditions - Submission of a proposal pursuant to this RFP shall constitute acknowledgment and acceptance of all terms and conditions hereinafter set forth in this RFP.

The time and date are fixed, and extensions will not be granted unless specifically stated by the City in an addendum to this RFP. Proposals not received before the bid event time will not be accepted.

#### C. ALTERNATIVE PROPOSALS

Only one proposal is to be submitted by each Company for this RFP. Multiple simultaneous proposals will result in rejection of all Proposals submitted by Company. A Company may, prior to the proposal due date and time, withdraw a proposal and submit a new proposal, so long as the new proposal is submitted before the proposal due date and time.

#### D. COMPLETION OF PROPOSAL

Proposals shall be completed in all respects as required by this RFP. A proposal may be rejected if conditional or incomplete, or if it contains any alterations or other irregularities of any kind, and will be rejected if any such defect or irregularity can materially affect the quality of the proposal. Proposals which contain false or misleading statements may be rejected. If, in the opinion of the City's Selection Committee, such information was intended to mislead the City in its evaluation of the proposal, and the attribute, condition, or capability is a requirement of this RFP, the proposal will be rejected. Statements made by a Company shall also be without ambiguity, and with adequate elaboration, where necessary, for clear understanding.

Unauthorized conditions, exemptions, limitations, qualifications, or provisions attached to a Proposal will render it non-responsive and will cause its rejection.

The Company, in responding to this RFP, must submit Proposals in the format identified in this RFP. The Proposal must address all requirements of the RFP even if a "no response" is appropriate.

Costs for developing Proposals are entirely the responsibility of the Company and shall not be chargeable to the City. The City shall not be liable for any costs incurred in response to this RFP, including but not limited to, costs for any interviews, presentations, or other follow-up information necessary as part of the selection process. All costs shall be borne by the Company responding to this RFP. The Company responding to this RFP shall hold the City harmless from any liability, claim, and expense whatsoever incurred by or on behalf of the Company.

## E. INQUIRIES

If prior to the date fixed for submission of Proposals, a prospective Company discovers any ambiguity, conflict, discrepancy, omission or other errors in this RFP or any of its appendices or exhibits, the Company shall immediately notify the City of such error in writing and request modification or clarification of the document. Modifications shall be made by written Addenda to the RFP.

If a Company fails to notify the City, prior to the date fixed for submissions of Proposals, of an error in the RFP known to the Company, or an error that reasonably should have been known to the Company, the Company shall submit its Proposal at its own risk, and if the Company is awarded a Contract, it shall not be entitled to additional compensation or time by reason of the error or its later correction.

All communications regarding technical, scope, and/or project related questions and requests for clarifications, changes, exceptions, and deviations to the terms and conditions set forth in this RFP **shall be submitted via "Q&A"** through the City's Electronic Bidding System, PlanetBids Vendor Portal before the deadline and according to these specifications herein. Any and all other bidding communications shall only be with **Shiloh A. Rogers, Purchasing Manager**, at (951) 922-3121.

**The Final day for receipt of questions from the Proposer shall be on or before the due date indicated in the schedule of events section.** To ensure fairness and avoid misunderstandings, **all communications must be in written format** and submitted **only** in the format set forth above. Any verbal communications will not be considered or responded to. All questions received by the due date will be logged and reviewed and if required, a response will be provided via an addendum to the RFP that will be posted on the City's website. **Any communications, whether written or verbal, with any City Councilmember, City staff, or RFP evaluation panel member other than the individual indicated above, prior to award of a contract by City Council, is strictly prohibited and the Proposer shall be disqualified from consideration.**

## F. PROPOSAL FORMAT AND CONTENT

Proposals should be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Responses should emphasize the Company's demonstrated capability to perform work of this type. Emphasis should be concentrated on completeness and clarity of content.

Proposals shall adhere to the following format for organization and content. Proposals must be typed and arranged/divided in the following sequence to facilitate evaluation:

- Cover Letter
- Statement of Understanding and Approach
- Company Information
- Company Personnel
- Experience and References

- Evidence of Insurance
- Financial Capability
- Disclosure
- Price Proposal
- Proposal Forms Including Bid Bond (Bid Security) (“Attachment B” - to be filled out and submitted with, and as part of proposal)

**a. Cover Letter**

The cover letter shall include a brief general statement of intent to perform the services and confirm that all elements of the RFP have been reviewed and understood. The letter shall include a brief summary of Company’s qualifications and Company’s willingness to enter into a contract under the terms and conditions prescribed by this RFP and in the Sample Agreement. The letter must identify a single person for contact during the RFP review process.

**b. Statement of Understanding and Approach**

This section must demonstrate an understanding of the Services. It should describe the general approach, organization and staffing required for the Services requested. If necessary, preliminary investigations, due diligence, and research shall be discussed in this section.

This section should include the following:

1. An Implementation Plan that describes in detail (i) the methods, including controls by which your firm or entity manages projects of the type sought by this RFP; (ii) methodology for soliciting and documenting views of internal and external stakeholders; (iii) and any other project management or implementation strategies or techniques that the respondent intends to employ in carrying out the work.
2. Detailed description of efforts your firm or entity will undertake to achieve client satisfaction and to satisfy the requirements of the "Scope of Work" section.
3. Detailed project schedule, identifying all tasks and deliverables to be performed, durations for each task, and overall time of completion, including a complete transition plan. Include your plan to deal with fluctuation in service needs and any associated price adjustments.
4. Detailed description of specific tasks you will require from City staff. Explain what the respective roles of City staff and your staff would be to complete the tasks specified in the Scope of Work.
5. Proposers are encouraged to provide additional innovative and/or creative approaches for providing the service that will maximize efficient, cost-effective operations or increased performance capabilities. In addition, the

City will consider proposals that offer alternative service delivery means and methods for the services desired.

6. Proposers are also requested to identify any City owned facilities or property which Proposer would propose to use or lease, purchase, or rent from the City in connection with the services to be performed, including information about the terms of any proposed lease, purchase or use of such equipment and facilities, and how this proposed structure affects the overall cost proposal to the City, if applicable.

#### **c. Company Information**

This section shall include contact person information, address and telephone number of the company main office and branch offices. Each Company shall identify itself as to the type of organizational entity (corporation, sole proprietorship, partnership, joint venture, etc.). Any supplemental information that Company believes may be pertinent to the selection process may be provided.

The Proposal shall identify any litigation, mediation, or arbitration, regarding the performance of any services similar to the Services, in which the Company has been involved in the past five (5) years. If the Services require a license or certification, the Proposal shall include any claims or disciplinary action taken against Company or any of Company's key personnel within the past five years.

#### **d. Company Personnel**

This section shall contain names, contact numbers and description of experience, including licenses and/or certifications, of all key personnel who would be assigned to perform the Services. Members of the Company's professional team (managers, contact person, etc.) should be identified by name, title, phone number, and description of the portion of work they will be assigned to perform under this Agreement. Also include major subcontractors (if any) and their degree of involvement in this program. If the Company is including any subcontractors, the Company shall identify how long the Company has worked with the subcontractor.

#### **e. Experience and References**

The Proposal must demonstrate that the Company, or its key personnel, has at least five (5) years' of experience under a legally registered business name, that provides services of a similar type and scope as described in the Scope of Services. A Company shall not have filed for bankruptcy under any business name over the past five (5) years.

Company shall provide at least three (3) references, within the past five (5) years, of clients for whom services have been performed that are comparable in quality and scope to that specified in this RFP (Use Attachment B, Reference List form.) The references shall include client names, addresses, telephone numbers and e-mail addresses of the clients for whom prior work was performed and include an explanation of the services provided along with project start and end dates.



**f. Evidence of Insurance**

In addition, the Company shall provide evidence of possession of insurance in the coverage and amounts listed in the Sample Agreement (Attachment C).

City requires that licensees, lessees, and vendors have an *approved* Certificate of Insurance (not a declaration or policy) or proof of legal self-insurance on file with the City for the issuance of a permit or contract. Within ten (10) consecutive calendar days of award of contract, successful Proposer must furnish the City with the Certificates of Insurance proving coverage as specified in contract sample.

**g. Financial Capacity**

Provide the Proposer's latest audited financial statement or other pertinent information such as internal unaudited financial statements and financial references to allow the City to reasonably formulate a determination about the financial capacity of the Proposer. Describe any administrative proceedings, claims, lawsuits, or other exposures pending against the Proposer.

**h. Disclosure**

Please disclose any and all past or current business and personal relationships with any current Banning elected official, appointed official, City employee, or family member of any current Banning elected official, appointed official, or City employee. *Any past or current business relationship may not disqualify the firm from consideration*

**i. Price Proposal**

All Proposers are required to use the Bid Schedule form to submit pricing as specified for their proposal. Pricing instructions should be clearly defined to ensure fees proposed can be compared and evaluated. Additional pricing information can be submitted within your proposal. Proposals shall be valid for a minimum of 180 days following submission.

**j. Proposal Forms INCLUDING Bid Bond (Bid Security) (Attachment "B")**

**As a convenience to Proposers, the following is a list of the Proposal Forms (Attachment "B"), enclosed with this RFP. All forms shall be filled out and submitted with, and as part of the proposal response:**

**1. Ex Parte Communications Certificate**

Proposers and Proposers' representatives should not communicate with the City Council members about this RFP. In addition, Proposers and Proposers' representatives should not communicate outside the procedures set forth in this RFP with an officer, employee or agent of the City, including any member of the evaluation panel, with the exception of the RFP Facilitator, regarding this RFP until after Contract Award. Proposers and their representatives are not prohibited, however, from making oral statements or presentations in public to one or more representatives of the City during a public meeting.

A "Proposer" or "Proposer's representative" includes all of the Proposer's employees, officers, directors, consultants and agents, any subcontractors or suppliers listed in the Proposer's proposal, and any individual or entity who has been requested by the Proposer to contact the City on the Proposer's behalf.

**2. Disqualifications Questionnaire**

Proposers shall complete and submit, under penalty of perjury, a standard form of questionnaire inquiring whether a Proposer, any officer of a proposer, or any employee of a Proposer who has a proprietary interest in the Proposer, has ever been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local government project because of a violation of law or safety regulation and if so, to explain the circumstances. A proposal may be rejected on the basis of a Proposer, any officer or employee of such Proposer, having been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local project because of a violation of law or a safety regulation.

**3. Disclosure of Government Positions**

In order to analyze possible conflicts that might prevent a Proposer from acting on behalf of the City, the City requires that all Proposers disclose in their proposals any positions that they hold as directors, officers, or employees of any governmental entity. Additional disclosure may be required prior to contract award or during the term of the contract. Each Proposer shall disclose whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months.

**4. Indemnity and Insurance Statement**

All proposals submitted shall include the signed Indemnity and Insurance Statement with their proposal response. Proposers shall comply with and agree to be bound by the City's Indemnification and Insurance Requirements.

**5. Proposal Bid Schedule Form**

All proposals submitted shall have a stated dollar bid amount for providing the services outlined in the Scope of Services. All proposals shall include a full and complete breakdown of all the costs, and include a Grand Total Amount to complete this project and fulfill the entire scope of services herein.

**6. Non-Collusion Affidavit by Contractor, Notarized**

Bidders are required to sign, notarize, and submit this form to which confirms that their company and their proposal is genuine.

**7. Bidder's Reference List**

Bidders are to list their references using this form.

**8. Bidder Acknowledgement**

Bidders shall fill out and submit the Bidder Acknowledgement form indicating that they will submit the appropriate bid information required herein.

**9. Bid Bond (Bid Security)**

No bid will be considered unless it is made on a proposal form furnished by the City (Attachment "B"). Each Bid must be accompanied by cash, a certified cashier's check or bidders bond of the prescribed form and made payable to the City of Banning for an amount equal to ten percent (10%) of total bid for twelve months, such guaranty to be forfeited should the bidder to whom the contract is awarded fail to furnish the required bonds and enter into a contract with the City within the period of time provided by the proposal requirements.

**10. Statement of Qualifications and information for landscape services**

Bidders shall fill out and submit the Statement of Qualifications to affirm that the bidder is qualified based on the requirements herein.

**11. Public Works Contract Requirements (pages 1-5)**

Bidders shall fill out and sign that they adhere to all State Government Code, Labor, Prevailing Wage, and Public Works requirements.

**G. INSTRUCTION TO CONTRACTORS**

Proposals to be entitled for consideration must be made in accordance with the following instructions:

1. Proposal Conditions
  - a. Each Contractor shall exercise utmost diligence to obtain a full understanding of the Scope of Work/Specifications and related proposal documents. The City may advise the Contractor of changes in the contract documents and specifications by the issuance of Addenda during the proposal period. All such changes shall become a part of the contract. No proposal may be withdrawn because of having been compiled from an incomplete set of contract documents and/or Scope of Work/Specifications.
  - b. Blank spaces in the proposals must be properly filled in and the phraseology thereof must not be changed. Alterations by erasure or interlineations must be explained or noted in the proposal over the signature of the Contractor.



- c. No telegraphic proposal or telegraphic modification of a proposal will be considered. Proposals received after the time fixed for receiving them will not be considered.
- d. If the proposal is made by an individual, it must be signed with the full name of the Contractor, whose address must be given; if it is made by a firm, it must be signed with the partnership name by a member of the firm, and the name and full address of each member must be given; and if it is made by a corporation, it must be signed by a properly authorized officer in the corporation and the name and corporate seal must be affixed thereon.
- e. Contractor shall submit detailed description of all hiring, training, testing, and disciplinary policies and procedures used by this firm.

#### H. EXAMINATION OF RFP AND SITES OF WORK

The Company shall carefully examine the RFP and all sites, if applicable, of the work contemplated. The submission of a Proposal shall be conclusive evidence that the Company has investigated and is satisfied as to the conditions to be encountered, as to the character, quality, and quantities of work to be performed and materials to be furnished, the difficulties to be encountered, and to the requirements of the Proposal, RFP, and other Contract Documents.

By submitting a Proposal, the Company hereby certifies that it has: examined the local conditions, read each and every clause of this RFP, included all costs necessary to complete the specified work in its proposed prices, and agrees that if it is awarded the Contract it will make no claim against the City based upon ignorance of local conditions or misunderstanding of any provision of the Contract. Should the conditions turn out otherwise than anticipated by it, the Company agrees to assume all risks incident thereto.

#### I. ADDENDA

Unless otherwise specified, any addenda issued during the time of bidding must be acknowledged electronically via the City's Bidding Website, which will be made part of the proposal. Addenda notifications will be provided to those listed on the Electronic Prospective Bidder's List via email.

#### J. WITHDRAWAL OF PROPOSAL

All proposals shall be firm offers and may not be withdrawn for a period of one hundred twenty (120) days following the deadline date for submission of proposals noted herein. Submitted Proposals may be withdrawn at any time prior to the submission deadline.

#### K. PUBLIC RECORDS

All Proposals submitted in response to this RFP become the property of the City and pursuant to the Public Records Act (Gov. Code, § 6250 et seq.) are public records, and as such may be subject to public review at least 10 days before selection.

The Company must notify the City in advance of any proprietary or confidential materials contained in the Proposal and provide justification for not making such material public. The City shall have sole discretion to disclose or not disclose such material subject to any protective order that the Company may obtain. Note that under California law, price proposal to a public agency is not a trade secret.

Submission of a proposal shall indicate that, if Proposer requests that the City withhold from disclosure information identified as confidential, and the City complies with the Proposer's request, Proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless the City from and against all damages (including but not limited to attorney's fees that may be awarded to the party requesting the Proposer information), and pay any and all costs and expenses related to the withholding of Proposer information. Proposer shall not make a claim, sue, or maintain any legal action against the City or its directors, officers, employees, or agents concerning the disclosure, or withholding from disclosure, of any Proposer information. If Proposer does not request that the City withhold from disclosure information identified as confidential, the City shall have no obligation to withhold the information from disclosure and may release the information sought without any liability to the City.

The City reserves the right to make use of any information or idea contained in the Proposal. All materials, ideas and formats submitted in response to this RFP will become the property of the City upon receipt.

#### L. EVALUATION OF PROPOSALS

The City reserves the right to amend, withdraw, and cancel this RFP. The City also reserves the right to reject all responses to this RFP at any time prior to agreement execution. Furthermore, the City reserves the right to request additional information about any and all Proposals, that in City's opinion, is necessary to assure that the Company's competence, number of qualified employees, business organization, experience, and financial resources are adequate to perform the Services.

All Proposals shall be reviewed to verify that the Company has met the minimum requirements as stated in this RFP. Proposals that have not followed the rules, do not meet minimum content and quality standards, and/or do not provide references will be rejected as non-responsive.

Responsive proposals will be evaluated on the basis of the following criteria:

- a. Pricing (50%)
- b. Experience (Projects of similar size and scope) (30%)
- c. Project Understanding, Approach (Implementation Plan) and Methodology (20%)

**If needed, interviews will be scheduled during or after the week indicated in the "Schedule of Events" section.**

If needed, interviews will be conducted by the same members on the proposal evaluation panel. Dates, times, and a location will be coordinated at that time if interviews are deemed necessary

after the evaluation of responsive proposals. If interviews are deemed necessary, candidates who have submitted the highest scoring proposals within a competitive range as determined by the City will be invited to participate in the interview process.

The selected Company shall then enter into exclusive negotiations with the City to formalize the Scope of Service and Compensation. Recommendation for award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Proposers unless an agreement is reached. If the City is unable to obtain a fair and reasonable price or cannot reach agreement regarding the terms for the Scope of Services, then the City will end negotiations with that Company and begin negotiations with the next Company which best meets the needs of the City, and so on until a City and the Company reach agreement.

The City intends to select the Company that offers the best value to the City based on the criteria outlined above.

#### M. CONFLICT OF INTEREST

The Proposer warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code sections 1090 et seq., or sections 87100 et seq., during the performance of services under any Agreement awarded. The Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of any Agreement awarded. Violation of this provision may result in any Agreement awarded being deemed void and unenforceable.

#### N. REJECTION OF PROPOSALS

The City may reject any/or all Proposals and may waive any immaterial deviation in a Proposal. The City's waiver of an immaterial defect shall in no way modify this RFP or excuse the Company from full compliance with this RFP and/or the Contract Documents if awarded the Contract. Proposals that include terms and conditions other than City's terms and conditions may be rejected as being non-responsive. The City may make investigations as deemed necessary to determine the ability of the Company to perform the work, and the Company shall furnish to the City all such information and data for this purpose as requested by the City. The City reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Company fails to satisfy the City that such Company is properly qualified to carry out the obligations of the Agreement and to complete the work described herein.

#### O. PROTEST PROCEDURES

Failure to comply with the rules set forth herein may result in rejection of the protest. Protests based upon restrictive specifications or alleged improprieties in the proposal procedure which are apparent or reasonably should have been discovered prior to receipt of proposals shall be filed in writing with the RFP Facilitator at least 10 calendar days prior to the deadline for receipt of proposals. The protest must clearly specify in writing the grounds and evidence on which the protest is based.

Protests based upon alleged improprieties that are not apparent or which could not reasonably have been discovered prior to submission date of the proposals, such as disputes over the staff recommendation for contract award, shall be submitted in writing to the RFP Facilitator, within forty-eight hours from receipt of the notice from the City advising of staff's recommendation for award of contract. The protest must clearly specify in writing the grounds and evidence on which the protest is based. The RFP Facilitator will respond to the protest in writing at least three days prior to the meeting at which staff's recommendation to the City Council will be considered. Should Proposer decide to appeal the response of the RFP Facilitator, and pursue its protest at the Council meeting, it will notify the RFP Facilitator of its intention at least two days prior to the scheduled meeting.

#### IV. FACILITIES DESCRIPTION

Landscape Maintenance District No. 1 (the "District") currently consists of 16 accepted tracts: Tract Nos. 21882, 22810, 22811, 22913, 23446 (including the median on Highland Home Road), 23598 (includes frontage of several homes along Moonbeam Drive), 28252, 29721, 30186, 30222 (including Richard Sanchez Park), 30793, 31833, 31834, 31835, 32109, and 30906 (portion of this tract that has been accepted by the City). This includes the maintenance of existing and proposed public landscaping and storm drain facilities (including detention/retention basins) installed and constructed within the public places. For the specific locations, the location map for the tract sites is enclosed as Appendix "A". The purpose of Landscape Maintenance District No. 1 is for the maintenance and servicing of landscape medians and parkways, perimeter strips and backup walls, landscaped hillsides with high visibility, side slopes adjacent to sidewalks, flood detention or retention basins, and the irrigation of the above facilities.

When additional tracts, or portions thereof, are accepted by the City of Banning and become part of Landscape Maintenance District No. 1, the City and Contractor shall negotiate a fair and reasonable price (based on labor costs, needed planting materials, square footage of area, current costs, etc.) to compensate the Contractor for the newly assigned work. **Note: The City shall decide if any of the abovementioned tracts will be maintained by Public Works Department staff. If City staff maintains a particular tract or any portion thereof, the bid amount for that tract or area (if a portion, the price will be negotiated) will be deducted from the contract award amount. Thus, the scope of services could be reduced by the City at any time during the life of the contract. The City reserves the right to not award any initial contract at all. If a Tract is being rehabilitated or reconstructed and thus the irrigation and plant material are being removed and newly installed, the landscape maintenance of this Tract will be temporarily removed from the Scope of Work and no compensation shall be made on that Tract or portion thereof until the City Engineer notifies the Contractor to resume its' maintenance.**

#### V. SCOPE OF WORK

- A. The intent of this Contract Agreement is to secure a Contractor, which shall provide COMPLETE LANDSCAPE MAINTENANCE SERVICES for Landscape Maintenance District No. 1 for a period of approximately twelve months with a possible option to renew for up to four single additional years.



- B. The Contractor shall furnish all labor, tools, materials, and equipment to provide landscape maintenance services as set forth in these specifications.
  - C. All work shall be done in a thorough and workmanlike manner to the satisfaction of the City Engineer, or his authorized agent, and comply with legal landscape maintenance practices. All work shall not be considered complete until verified by the City Engineer or his authorized agent. The premises shall be maintained at the level of service provided for in these specifications at all times.
  - D. The Contractor shall have the duty to provide weekly complete landscape maintenance of all work sites listed in Section IV, and any others added in the future. When additional tracts, or portions thereof, are accepted by the City and become part of Landscape Maintenance District No. 1, the City and Contractor shall negotiate a fair and reasonable cost to compensate the Contractor for the newly assigned work.
  - E. The Contractor shall be available twenty-four (24) hours a day, seven (7) days a week to respond to all emergencies within two (2) hours of notification.
  - F. The Contractor shall perform a weekly maintenance inspection, during daylight hours, of all areas. Such inspection shall be both visual and operational. It shall include, but not be limited to, the operation of all irrigation systems, and checking maintenance, repairs, and replacement of existing landscaped areas, which are maintained under this contract. Any improvement on the project site shall be approved by City prior to commencement of improvement, for which City will respond or give approval within a reasonable time, unless it is in an emergency situation. The Contractor shall provide all proper documentation for all purchases which shall be presented to City as soon as possible. All expenditures will be recorded and reimbursed by City on a quarterly basis.
1. The Contractor is to provide each of the items listed below:
    - a. Organizational data.
    - b. Organizational chart including all executives.
    - c. The name of the foreman or supervisor assigned to supervise the work of this contract.
    - d. Current number of employees of the company.
    - e. Brief description of company personnel and training procedures.
  2. **Quality Control** - The Contractor shall prepare and provide an Inspection/Checklist Form for each Tract area as approved by the Public Works Director/City Engineer or his designee. The Contractor's personnel will use this form to reflect services performed and any exceptions to the requirements. Additionally, both the Contractor's Supervisor and Public Works Director/City Engineer or his designee

evaluating the effectiveness and adequacy of services performed, will use this form. This form will be completed weekly and be kept by the Public Works Director in an appropriate binder. A copy of the inspection/checklist will be forwarded to the Public Works Director/City Engineer and/or his designee on a weekly basis.

Contractor shall submit detailed description of all hiring, training, testing, and disciplinary policies and procedures used by this firm, prior to the contract award.

## **VI. COMPENSATION**

### **E. BASIC COMPENSATION**

OWNER shall pay CONTRACTOR, as compensation for the services to be performed, the sum of per month listed in the Contract Agreement with additional adjustments as specified thereafter. Additional adjustments (additions or deletions) shall be made to the monthly compensation if/as new areas are included in the City of Banning, Landscape Maintenance District No. 1, or if individual tracts/areas will instead be maintained by Public Works Department staff.

Compensation shall be adjusted annually, on July 1 of each year commencing on July 1, 2020, during the term of the Contract Agreement to reflect annual changes in the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index (CPI) Riverside-San Bernardino-Ontario area, or any successor index, as set forth for the previous calendar year (January 1 through December 31) prior to the date of adjustment. The City Council must approve such adjustment at the time the contract is renewed.

## **VII. SCOPE OF SERVICES**

**JULY 1, 2019 THROUGH JUNE 30, 2020, MAXIMUM UP TO JUNE 30, 2024**

### **LANDSCAPE MAINTENANCE DISTRICT NO. 1**

- The Scope of Services shall include, but not be limited to:
  1. Irrigation Program, Conservation, Maintenance, and Repair
  2. Disease and Pest Control
  3. Weed Control

4. TurfGrass Mowing, Edging, Trimming, Aerating, Overseeding, Replanting and Fertilizing
5. Ground Cover Edging, Trimming, Thinning, Pruning, Replanting, and Fertilization
6. Cultivation
7. Shrub Thinning, Pruning, and Fertilization
8. Tree Trimming, Pruning, Sucker Removal, Staking and Tying, and Fertilization
9. Curb and Gutter Maintenance
10. Walkway Maintenance
11. Drain Maintenance
12. Removal of Leaves
13. Litter Removal
14. Natural Area Maintenance

#### **VIII. ADDITIONAL WORK**

- A. The City Engineer may authorize the Contractor to perform additional work. Additional work shall be defined as work not included in these specifications with the exception of additional tracts, or portions thereof, which may be added.
- F. Prior to the Contractor performing any additional work, the Contractor shall prepare and submit a written description of the work with an estimate of labor and materials cost. No work shall commence without written authorization from the City Engineer, or his designee. In the event that conditions exist where there is imminent danger of injury to the public or damage to property, the City Engineer may verbally authorize the work to be performed upon receiving a verbal estimate from the Contractor. Within twenty-four (24) hours after receiving verbal authorization, the Contractor shall submit a written estimate to the City Engineer for written approval.
- C. The cost estimate for additional work shall consist of the following elements:
  1. Wholesale cost of materials including sales tax plus ten percent (10%).
  2. Base cost of labor plus fifteen percent (15%) for overhead and profit.
- D. Written authorization for additional work from the City Engineer, or his designee,



shall be by the issuance of a Change Order. This Change Order shall be considered an amendment to the Contract Agreement and approved by both the City Engineer and Contractor.

- E. All additional work shall commence on the specified date established and shall diligently proceed until completion.
- F. Upon completion of the additional work, the City Engineer or his designee shall be notified so that the work may be verified.
- G. The Contractor shall submit an invoice for compensation with attached photocopies of original invoices for materials. Compensation shall not exceed the written estimate. The contractor's invoice shall be subject to audit and review by the City prior to payment.
- H. The City of Banning reserves the right to repair and/or contract with a third party to perform such additional work.

#### **IX. TERM, DURATION AND RENEWAL OF CONTRACT AGREEMENT**

- A. Except as otherwise provided herein, services under this Contract Agreement shall commence on or about July 1, 2019, and terminate no later than June 30, 2024. A renewal of the Contract Agreement shall occur each year ending June 30, for the contract price submitted, subject to the terms of Section VI and only if additional single years are approved by the City.
- B. Subject to the provision for Contract Termination as set forth in Section XLVI thereof, the Contract Agreement shall be for a maximum period of up to 60 months unless the City of Banning first gives written notice to the other at least thirty (30) days and the Contractor gives written notice ninety (90) days, prior to the termination date of the intent to renew the Contract Agreement.

#### **X. CONTRACTOR LIABILITY**

- A. **All damage to existing improvements (turf, shrubs, trees, curb, gutter, sidewalk, sprinkler systems, etc.) located within areas, and adjacent to areas under maintenance, which in the opinion of the City Engineer are due to the Contractor's operation, shall be repaired or replaced at the Contractor's expense with similar materials and in an approved manner.**
- B. Such repairs and/or replacement shall be performed by the Contractor at no cost to the City, and shall be accomplished as directed by the City Engineer or his representative. Repairs shall be made immediately after damage or alteration occurs. Deductions shall be made from the Contractor's payment in the amount necessary to compensate the City for such repairs in the event such repair work is

done by City forces or another source or is found to be unsatisfactory as stated in Section XLIII.

- C. Irrigation damage shall be repaired or replaced within the following time limits:
  - 1. Mainline irrigation breaks shall be repaired within two (2) hours.
  - 2. All other irrigation repair and/or replacement shall be completed within one (1) working day.
- D. All damages to turf, ground cover, shrubs or trees shall be repaired or replaced by the Contractor within five (5) working days at no cost to the City.
  - 1. Damage to turf shall be repaired by replacement with the appropriate variety of sod; reseeding shall not be considered as an adequate repair.
  - 2. Damage to ground cover shall be repaired by replacement with the appropriate variety of plant material. Size and spacing shall be determined by the City Engineer.
  - 3. Damage to shrubs may be corrected by appropriate pruning; however, if in the opinion of the City Engineer the damage is severe, the shrub shall be removed and replaced with a similar variety and size.
  - 4. Damage to trees shall be repaired in the following manner:
    - a. Minor damage such as bark lost from mechanical equipment shall be remedied by a qualified Tree Surgeon or Arborist.
    - b. If the damage results in the loss of the tree, or a recommendation of removal, the damaged tree shall be removed and replaced with a similar variety and size.
- E. All damage resulting from chemical application and/or operation, either by spray-drift, improper application, lateral leaching, or other means, shall be corrected in accordance with the previous provisions and the soil conditioned to ensure its ability to support plant life.

## **XI. INSPECTION**

The City shall inspect the work area to insure adequacy of maintenance and methods of performing the work are in compliance with the contract. However, this shall not be construed to relieve the Contractor of any duty under this contract. Discrepancies and deficiencies in the work shall be brought to the attention of the Contractor and corrected in the manner agreed to by the City Engineer.

**Once the Contract has been awarded, the Contractor shall inspect the LMD No.1 for missing plants, ground cover, shrubs, irrigation materials, etc. and provide such**

inventory list along with a cost estimate for installation of each item, to the City Engineer for approval. Such inventory list will then be due by April 1<sup>st</sup> of each year beginning on April 1, 2020 after the initial punch list is made for the newly awarded contract.

- A. It shall be the Contractor's responsibility to inspect, and identify, any condition(s) that renders any areas within this Contract Agreement unsafe, as well as any unsafe practices occurring thereon. The City Engineer shall be notified immediately of any unsafe condition that requires correction.
- B. The Contractor shall be responsible for making minor corrections including, but not limited to filling holes in landscaped areas and paving, using barricades or traffic cones to alert persons of the existence of hazards, and replacing valve box covers.
- C. The Contractor shall inspect all work sites for hazards, or potential hazards on a daily basis.
- D. During the required inspection of all work sites for hazards, or potential hazards, the Contractor shall keep a log indicating the date the area was inspected, any unsafe conditions found, and the action taken.
- E. The Contractor shall cooperate fully with the City of Banning in the investigation of any accidental injury or death occurring on the premises, including the submission of a complete written report thereof to the City Engineer within five (5) days following the occurrence.

## **XII. SAFETY**

- A. The Contractor shall perform all work outlined in these specifications in such a manner as to provide maximum safety to the public, and meet all accepted standards for safe practices during the maintenance operation, to safely maintain equipment, machines and materials or other hazards consequential or related to the work. The contractor shall have sole responsibility for complying with all local, County, State or other legal requirements including, but not limited to CAL-OSHA.
- B. The City Engineer or his designee, reserves the right to issue restraint, or cease and desist orders, to the Contractor when unsafe or harmful acts are observed or reported relative to the performance of work under this contract.
- C. The Contractor shall so conduct its operation as to cause the least possible obstruction and inconvenience to public traffic. The Contractor shall furnish, erect and maintain such fences, barriers, lights and warning signs as deemed necessary

by the City Engineer or his designee.

- D. The Contractor must abide by the provisions of the **“WORK AREA TRAFFIC CONTROL HANDBOOK” (WATCH)** published by Building News, Inc., 3055 Overland Avenue, Los Angeles, CA 90034 (213) 202-7775.
- E. High Level Warning Devices provide advance warning of a work area by being visible to a driver even when the work area is obstructed from view by vehicles or construction equipment.
  - 1. High level warning devices shall be used where indicated by the City Engineer, such as, at street approaches to locations where construction or maintenance work is being performed within or immediately adjacent to a traffic lane.
  - 2. High level warning devices shall be at least 9 feet high with legs base, or truck mounting designed to resist overturning in brisk winds. Sandbags may be used to add weight to the base or legs. High Level Warning devices shall be equipped with a yoke at the top to accommodate at least three flags. Flags shall be fabricated of high visibility orange material and equipped with stays to keep flags extended. Torn or dirty flags shall be immediately replaced.
  - 3. The warning signs are intended to be permanently mounted to the High Level Warning Device. These signs must be approved by the proper authorizing agency. When required, all signs must be provided, installed and maintained by the Contractor. No signs or supports shall bear any commercial advertising. These warning signs shall be high visibility orange material with black lettering.
  - 4. Signs shall be installed immediately before work is to commence and must be removed immediately after work is complete.
  - 5. The location of the signs will depend upon alignment, grade, location of street intersections, and posted speed limit. Signs shall face and be visible to oncoming traffic and be mounted so as to resist displacement. The center of the warning sign shall be at least 4 1/2 feet above the roadway. The Advance Warning signs shall be located on the right hand side of traffic lanes. Minimum Sign Placement From Work Area are listed as follows:

**Traffic Speed Advancement Warning Sign Placement**

25 MPH	150	FT.
30 MPH	200	FT.
35 MPH	250	FT.
40 MPH	350	FT.
45 MPH	550 FT.	

**XIII. REMOVING OBSTRUCTIONS AND MAINTENANCE OF EXISTING IMPROVEMENTS**

- A. When the work hereunder involves performance upon City property, and when the proper completion of the said work requires the temporary or permanent removal of Improvements, the Contractor shall, at his own expense, remove, and without unreasonable delay temporarily or permanently replace or relocate to the satisfaction of the City and of any other person or agency having jurisdiction, all water pipes, drainage lines, irrigation lines, conduits, culverts, driveways, fences, wires, poles, retaining walls, curbs, gutters, concrete walks, trees, shrubs, lawns and all other improvements. All such improvements temporarily removed shall be maintained until permanently replaced, all at the Contractor's expense.
- B. Where the work is to be constructed in, or adjacent to, areas which have been improved by lawns, trees, shrubs, or gardens, the Contractor shall remove such trees or plants as may be necessary for the prosecution of the work and give them proper care and attention until the work has been satisfactorily completed, after which the Contractor shall replace them in as nearly the original condition and location as is reasonably possible. Where it is necessary to deposit the excavated materials on the lawns during the process of construction, the Contractor shall first lay burlap or canvas on the lawn to prevent contact between the excavated material and the lawn.
- C. Unless otherwise indicated in the contract documents all utility lines, conduits, wires, or structures shall be maintained by the Contractor and shall not be disturbed, disconnected, or damaged by him during the progress of the work, provided, that should the contractor in the performance of the work disturb, disconnect, or damage any of the above, all expense arising from such disturbance, or in the replacement or repair thereof, shall be borne by the Contractor. However, in accordance with Section 4215 of the California Government Code, the Contractor shall be compensated for the cost of locating and repairing damage to main or trunkline utility facilities located on the job site, not due to the failure of the Contractor to exercise reasonable care; for costs of removing or relocating such utility facilities not indicated in the contract documents with reasonable accuracy; and for the operation cost for equipment on the project necessarily idled such work.
- D. At least two working days prior to commencing any excavation pursuant to this Contract, the Contractor shall contact Underground Service Alert or other appropriate regional notification center if the excavation will be conducted in an area which is known, or reasonably should be known, to contain subsurface



installations.

#### XIV. WORK SCHEDULE

- A. The Contractor shall accomplish all normal landscape maintenance required under this contract **between the hours of 7:00 AM and 6:00 PM, Monday through Saturday.** The City Engineer may grant, on an individual basis, permission to perform contract maintenance during other hours. **No maintenance functions that generate excess noise, which would cause annoyance to residents, shall commence before 8:00 AM. The Contractor shall establish a schedule of routine work to be followed in the performance of this contract, and submit such schedule to the City Engineer.**
- B. Within ten (10) days after the start of the maintenance contract, the Contractor shall submit to the City Engineer weekly detailed job schedule, names and titles of all persons working on the project. Materials and/or chemicals to be used on any site shall be approved by the City Engineer or his representative. The City Engineer shall be notified within five (5) working days of any deviation from this schedule or material usage.
- C. **The Contractor shall maintain and keep current a report form that records all on-going, seasonal and additional work maintenance functions performed on a daily basis by the Contractor's personnel. Said report shall be in a form and content acceptable to the City Engineer and shall be submitted to the City Engineer monthly. The monthly payment will not be made until such report is received by the City Engineer.**

#### XV. CONTRACTOR STAFF

- A. The Contractor shall furnish sufficient supervisory and working personnel capable of promptly accomplishing high quality and on schedule work required under this contract during the prescribed hours.
- B. The Contractor shall have competent supervisors, who may be working supervisors, on the job at all times. Work that is being performed must be by those who are capable to communicate effectively both in written and oral English, and discuss matters pertaining to this contract. Supervisors must be able to demonstrate to the satisfaction of the City Engineer that they possess adequate technical background. Any order or communication given to the supervisor shall be deemed as delivered to the Contractor.
- C. The Contractor, and his employees, shall conduct themselves in a proper and efficient manner at all times and shall cause the least possible annoyance to the public. The City Engineer may require the Contractor to remove from the work



site any employee(s) deemed careless, incompetent, or otherwise objectionable, whose continued employment on the job is considered to be contrary to the best interest of the City of Banning.

- D. The Contractor shall require each of his employees to wear basic public works working attire. This includes proper shoes, and other gear required by the State Safety Regulation, and proper wearing of the clothing. Shirts shall be worn and buttoned at all times; safety vests are required when indicated by the Work Area Traffic Control Handbook.

#### **XVI. STORAGE FACILITIES**

The City of Banning shall not provide any storage facilities for the Contractor.

#### **XVII. SIGNS**

- A. The Contractor shall not post signs or advertising matter upon the areas under maintenance unless prior written approval is obtained from the City Engineer.
- B. The Contractor shall, at all times, remove all unauthorized signs and advertising matter in the area under maintenance.

#### **XVIII. LOCKS AND KEYS**

- A. Where City of Banning locks and keys are required as part of this contract, the Contractor shall:
  - 1. Not duplicate any coded City key furnished by the City for access and operation of the controller.
  - 2. Surrender all keys furnished by the City promptly at the end of the contract period, or at any time deemed necessary by the City Engineer to prevent loss to the City of Banning.
  - 3. Protect the security of City property by keeping controller cabinet and enclosure doors locked at all times.
  - 4. Refrain from using premises behind locked doors for storage of materials, supplies or tools except as approved by the City Engineer.

#### **XIX. UTILITIES**

- A. The City of Banning shall pay for maintenance related water and electrical utilities.
- B. Water usage shall not exceed the amount required to comply with irrigation

schedules established by the Contractor and approved by the City Engineer.

- C. The Contractor may be required to pay for excessive utility usage due to the Contractor's failure to monitor irrigation system malfunctions or unauthorized increases in water usage.
- D. The excess cost will be determined by comparing the current usage with historical usage for the same time period.
- E. The excess cost factor may be deducted from payments to the Contractor; however, the Contractor will be allowed to explain the increase in utility usage prior to the determination that a deduction is warranted.

## **XX. NON-INTERFERENCE**

The Contractor shall not interfere with the public use of the premises, and shall conduct their operations so as to offer the least possible obstruction and inconvenience to the public, nor disrupt the peace and quiet of the area within which the services are performed.

## **XXI. PARKING**

The Contractor's vehicles and equipment shall not be parked or set in such a manner that they block pedestrian access or vehicular right-of-way except as required to comply with all safety standards of CAL-OSHA.

## **XXII. USE OF CHEMICALS**

- A. The Contractor shall submit a list of all chemical herbicides, pesticides and rodenticides proposed for use under this contract for approval by the City Engineer upon award of the contract. Materials used shall be limited to chemicals approved by the State of California Department of Food and Agriculture. The list shall include the exact brand name and generic formulation. The use of a chemical on the list shall be based on the recommendations of a licensed pest control advisor. The Contractor shall provide a list of pesticide applicator personnel and a copy of their Qualified Applicator license, issued by the Dept. of Pesticide Regulation Licensing to the City each year of the Contract.
- B. A certified pesticide applicator's license is required if such chemicals will be used. Submit the license to the City prior to the Contract start date.
- C. The use of chemicals shall conform to the current County of Riverside Agriculture Commissioner regulations.

- D. **No chemical herbicide, rodenticide, or pesticide shall be applied until its use is approved, in writing, by the City Engineer as appropriate for the purpose as proposed.**

### **XXIII. DISEASE AND PEST CONTROL**

- A. The Contractor shall regularly inspect all landscaped areas for the presence of disease, snail, insect or rodent infestation. The Contractor shall advise the City Engineer within five (5) days when any disease, snail, insect or rodent infestation is found; he shall identify the disease, snail, insect or rodent and specify control measures to be taken. Upon written approval of the City Engineer, the contractor shall implement the approved control measures, exercising extreme caution in the application of all spray materials, dusts or other materials utilized.
- B. Approved control measures shall be continued until the disease, snail, insect or rodent is controlled. The Contractor shall utilize all safeguards necessary during disease, snail, and insect or rodent control operations to ensure safety of the public and the employees of the Contractor.
- C. The Contractor shall perform at his sole expense the following services:
  - 1. All work involving the use of chemicals will be accomplished by a State of California licensed pest control operator. A written recommendation by a person possessing a valid California Pest Control Advisor License is required prior to chemical application.
  - 2. **All chemicals requiring a special permit for use must be registered by the Contractor with the County Agricultural Commissioner's Office and a permit obtained with a copy to the City Engineer prior to use. Pesticide application employees are trained and certified under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) requirements and the California Food and Agriculture Code. A copy of this license shall be given to the City Engineer to comply with the City's NPDES Permit.**
  - 3. **A copy of all forms submitted to the County Agricultural Commissioner shall be given to the City Engineer on a monthly basis.**
  - 4. All regulations and safety precautions listed in the "Pesticide Information and Safety Manual" published by the University of California will be adhered to.

### **XXIV. WEED AND TRASH CONTROL**

- A. For the purpose of these specifications, a weed will be considered as "any

undesirable or misplaced plant.” Trash shall be considered litter, garbage or debris should as discarded food or items, plastic straws or bags, etc.

- B. All areas within the specified maintenance area, including but not limited to, turf grass, shrub and ground cover areas, banks, planters, and hardscape areas shall be kept free of weeds and trash at all times.
- C. Weed removal shall consist of complete removal of all weeds, including top growth and roots, as the weeds appear.
- D. Weed and trash control shall be performed a minimum of one (1) time per week. If trash or debris is excessive, the City may ask for more frequent clean up and removal with no additional compensation allowed.
- E. Bare areas between plants shall be cultivated by hand on a weekly basis.
- F. Weeds shall be controlled either by hand, mechanical or chemical methods; however, the City Engineer may restrict the use of chemical weed control in certain areas. Trash shall be removed by hand.

#### **XXV. METHOD OF IRRIGATION**

- A. Irrigation shall be done by the use of automatic or manual sprinkler systems where available and operable.
- B. All areas receiving marginal coverage shall be irrigated by a portable irrigation method. The Contractor shall furnish all hoses, nozzles, sprinklers, etc., necessary to accomplish this supplemental irrigation. Care shall be exercised to prevent a waste of water, erosion, and/or detrimental seepage into existing underground improvements or structures.

#### **XXVI. INITIAL IRRIGATION INSPECTION**

- A. The Contractor shall initially inspect and familiarize himself with the entire irrigation system at all work sites and identify all needed repairs.
- B. **Required repairs and associated costs (cost estimate) shall be submitted to the City Engineer in a written statement within two (2) weeks after the start date of the Landscape Services Contract. If a written statement documenting the required repairs is not received by the City Engineer within the stated time frame, the entire system shall be interpreted as being fully operational.**
- C. The City shall review and verify all submitted repairs. Repairs may be completed by the following methods:

1. Authorize the Contractor to make appropriate repairs at the expense of the City as described in Section IV.
  2. Use City forces to make required repairs.
  3. Use another source to make required repairs.
- D. Upon completion of such repairs the Contractor shall sign-off each area as being fully operational.

## **XXVII. IRRIGATION INSPECTIONS, MAINTENANCE AND REPAIRS**

- A. **The Contractor shall file a monthly statement with the City Engineer reporting all system malfunctions, damage and obstructions, noting when corrective action was taken and certifying that all irrigation systems are functioning properly.**
- B. The Contractor shall inspect the operation of the irrigation system weekly for any malfunctions. In addition to regular testing, all irrigation systems shall be tested and inspected as necessary when damage is suspected, observed or reported.
- C. The Contractor shall maintain all irrigation systems, at no additional cost to the City, in such a way as to:
1. Guarantee proper coverage and full working capability.
  2. Make whatever adjustments may be necessary to prevent overspray or excessive runoff into street right-of-ways or other areas not meant to be irrigated. Water conservation measures will be complied with.
- D. The Contractor shall repair or replace inoperable irrigation equipment to maintain a fully operational system, including but not limited to, pressure pipes from the water meter to the control valves, all irrigation pipes, all manual and automatic valves, backflow devices, filters, strainers, pressure regulators, sprinkler heads, irrigation clamps and stakes, anti-drain valves, quick couplers, electrical wiring from the controller to the solenoid valves, emitters, drippers, valve boxes, controllers, valve markers, batteries, fittings and risers.
1. Maintenance includes, but is not limited to; tightening of loose fittings and packing nuts; flushing sprinkler heads, pipes, nozzles, valves, filters, strainers and backflow devices; adjusting sprinkler heads, anti-drain valves and pressure regulators, adjusting and lubricating controllers; and cleaning drip emitters.
- E. Irrigation repairs shall be made within the following time limits:



1. Mainline irrigation breaks shall be repaired within two (2) hours of identification or notification.
  2. All other irrigation repairs shall be made within one (1) day of identification or notification.
- F. Replacement of irrigation components shall be with originally installed materials of the same size and quality. Substitutions must be approved by the City Engineer in writing prior to installation.

## XXVIII. CONTROLLER PROGRAMMING

- A. The City Engineer may change the irrigation schedule as the need develops.
- B. Adequate soil moisture will be determined by programming the automatic sprinkler controllers as follows:
1. Whenever possible, automatic irrigation shall be programmed to operate **between the hours of 10:00 PM and 6:00 AM.** The Contractor shall turn off all irrigation systems during periods of rainfall and/or times when suspension of irrigation is desirable to conserve water while remaining within the guidelines of good horticulturally acceptable maintenance practices. **If water is found running, an equitable amount may be deducted from the Contractor's payment.**
  2. In areas where wind creates problems of spraying water onto private property or road rights-of-way, the controllers shall be set to operate during the period of lowest wind velocity which would normally occur at night.
  3. Consideration must be given to the soil conditions, seasonal temperatures, wind conditions, humidity, runoff and erosion potential and the relationship of conditions which affect day and night watering.
  4. Extremely close attention shall be paid to the demands of the plants as influenced by their exposure to sun or shade. Also, the variation in the size of plants, as well as varietal differences must be considered.
  5. The irrigation system will be controlled by the Contractor in such a way as not to cause an excessively wet area, which could interfere with the Contractor's ability to mow all turf.
  6. A soil probe shall be used to a depth of twelve (12) inches to determine the water penetration by random testing of the root zones.



- C. All landscaped and turf areas shall be irrigated as required to maintain adequate growth and appearance with a schedule most conducive to plant growth.

**XXIX. IRRIGATION CONTROLLER LOG BOOK**

- A. The Contractor shall furnish and maintain a controller logbook inside each controller cabinet in a waterproof packet.
- B. **A controller schedule for each controller shall be submitted to the City Engineer for review and approval within two (2) weeks after the start date of the Landscape Contract.**
- C. This controller schedule shall be entered into the logbook upon approval. An entry shall be made in the logbook each time a controller program is checked, or a setting is changed.
- D. All changes in the controller schedule shall be submitted and approved by the City Engineer prior to implementation of the requested change.
- E. The log book shall record the date of the controller program check or change, the results of the program check or reasons for a program change, and the name and initials of the person responsible for the check or change.
- F. Upon completion or termination of the Contract Agreement, the logbook shall become the property of the City of Banning.

**XXX. TURF GRASS CARE**

- A. Turf Grass Mowing:
  - 1. The Contractor shall mow all turf grass with adequately sharpened reel or rotary type mowers as to provide a smooth and even cut without tearing of turf grass blades.
  - 2. The blade adjustment shall provide a uniform, level cut without ridges, depressions, or scalping.
  - 3. All turf grasses shall be cut at a height between one and three-quarter (1-3/4) and two (2) inches with a rotary type mower throughout the year.
  - 4. Turf grass mowing height adjustments during periods of renovation shall be approved by the City Engineer.
  - 5. All turf grass clippings shall be picked up and removed to a legal dumping site prior after each mowing.

6. Care shall be exercised to avoid depressions in the established grade from mowing when the soil is saturated.
7. A mowing schedule, established by the Contractor and approved by the City Engineer, shall be maintained. All areas shall be mowed weekly; however, the Contractor may request alteration of this mowing frequency during period of inclement weather or slow growth.

**B. Turf Grass Edging and Trimming**

1. Turf grass edging and trimming shall be performed weekly at the time of mowing.
2. Edging of turf grass shall be performed with a power edger containing a steel blade.
3. All turf grass adjacent to sidewalks, curbs, mowing strips, shrub beds and where no improved surface exists, shall be edged in a neat uniform line.
4. Trimming of turf grass shall be performed along walls, and around valve boxes, water meter boxes, backflow devices, trees, shrubs, or any structures located within the turf grass area.
5. A four (4) inch barren strip shall be provided, and maintained, between turf grass areas and adjacent ground cover. Edging of turf grass and ground cover shall provide uniform delineation adjacent to this barren strip.
6. Trimming of plant material may be required around sprinklers to provide maximum irrigation coverage.
7. All clippings and trimmings shall be removed from the work site the same day work is performed and prior to the Contractor vacating the work site.
8. After mowing and edging are completed, all adjacent walkways and gutters shall be swept clean.

**C. Turf Grass Fertilization**

1. The turf grass shall be fertilized four times a year to provide a healthy and vigorously growing turf grass with horticulturally acceptable growth and color.
2. Fertilization shall be performed with a balanced fertilizer, consisting of 16-6-8 ratio, at a rate of one (1) pound of actual Nitrogen per 1,000 square feet of area.
3. **The Contractor shall notify the City Engineer, in writing, five (5) working days prior to any fertilizer application. This written**

**document shall include the location and date the fertilizer application will be performed and the type of fertilizer and method of application to be used.**

4. The Contractor shall immediately irrigate after each fertilizer application.
5. All fertilizer applications shall be performed with properly calibrated equipment to provide a uniform application.

D. Turf Grass Renovation

1. All turf grass shall be renovated annually.
2. Renovation shall consist of aerating, verticutting, thatch removal and overseeding.
3. **The Contractor shall notify the City Engineer, in writing, five (5) working days prior to any renovation operation. This written document shall include the location and date the renovation will be performed and the type of equipment and materials to be used.**
4. The Contractor shall remove all renovation-generated debris from the work site the day of the renovation operation and prior to vacating the work site.
5. Aerating shall be performed between March 1 and March 31, and shall be performed with an aerator machine which has one-half (1/2) to one (1) inch in diameter coring tines spaced no more than six (6) inches apart. The machine shall remove cores from the turf a minimum of two (2) inches in length.
6. Overseeding shall be performed within two (2) days after verticutting with properly calibrated seeders.
  - a. Turf grass shall be overseeded at a rate of eight (8) pounds of seed per 1,000 square feet. Certified Perennial Ryegrass shall be used. Seed tags shall be provided to the City Engineer.
  - b. The overseed shall be covered with one-eighth (1/8) inch of topsoil. The topsoil must be approved by the City Engineer and not contain Steer Manure.
7. Reseeding of bare spots shall be performed continually throughout the year to reestablish turf to an acceptable quality.
  - a. Reseeding shall be performed with certified turf grass seed similar to the established turf at a rate of eight (8) pounds per 1,000 square feet.

- b. Seed shall be topped with one-eighth (1/8) inch of topper. The topper must be approved by the City Engineer and shall not contain Steer Manure.
- c. The City Engineer may require the use of sod when deemed necessary. Provided that the loss of turf grass was not due to the negligence of the Contractor, the Contractor shall be entitled to the wholesale cost of the sod only.

### **XXXI. GROUND COVER CARE**

- A. Ground covers are low growing plants that grow in colonies to form a solid mat over the surface of the ground. The plants give a flat or two-dimensional effect to the landscape, such as, but not limited to arctotheca, gazania, vinca, baccharis, ivy trachelosperum, and varieties of ice plant.
- B. Edging and Trimming of Ground Cover
  - 1. Edging of ground cover areas shall be performed weekly.
  - 2. All ground cover adjacent to sidewalks, curbs, mowing strips, or where no improved surface exists, shall be edged in a neat, uniform line.
  - 3. All ground cover shall be continually trimmed at the dripline of all shrubs.
  - 4. All ground cover shall be continually trimmed along walls, valve boxes, water meter boxes, backflow devices, or other structures located within the ground cover areas.
  - 5. Trimming of ground cover may be required around sprinklers to provide maximum irrigation coverage.
  - 6. All clippings and trimmings shall be removed from the work site the same day work is performed and prior to the Contractor vacating the work site.
  - 7. After edging or trimming, the Contractor shall sweep clean all adjacent sidewalks or gutters.

#### **C. Cultivation of Ground Cover Areas**

The open soil between plants shall be cultivated weekly where the planting permits.

#### **C. Renovation of Ground Cover Areas**

Ground cover plantings shall be thinned and pruned for the health of the planting and the appearance of the site.

E. Replanting of Ground Cover Areas

Replanting shall be required to maintain the continuity of the ground cover area. Replacement material costs shall be incurred by the City; however, labor shall be provided by the Contractor at no additional cost to the City.

F. Ground Cover Fertilization

1. The ground cover shall be fertilized to provide a healthy and vigorously growing ground cover with horticulturally acceptable growth and appearance.
2. Fertilizing shall be performed with a balanced fertilizer, consisting of a 16-6-8 ratio, at a rate of one (1) pound actual Nitrogen per 1,000 square feet.
3. The Contractor shall immediately irrigate after each fertilizer application.
4. All fertilizer applications shall be performed with properly calibrated equipment to provide a uniform application.
5. **The Contractor shall notify the City Engineer, in writing, five (5) working days prior to any fertilizer application. This written document shall include the location and exact date of the fertilizer application and the type of fertilizer and method of application to be used.**

**XXXII. SHRUB CARE**

A. Pruning of Shrubs

1. **All shrubs shall be pruned annually in February, or more frequently if needed, to encourage healthy growth habits, removal of dead or damaged branches and maintain natural shape.**
2. Shrubs shall be pruned with sharp pruning tools.
3. Shrubs shall be pruned, as necessary, to prevent encroachment of passageways, walks, streets, and view of signs.
4. All pruning cuts shall be one-quarter (1/4) inch above a node (bud). No projections or stubs shall be allowed to remain.
5. The Contractor shall remove all clippings the same day shrubbery is pruned and prior to vacating the work site.
6. Pruning shall be done to maintain a well-groomed, laced-out appearance, and encourage air movement through the shrub.
7. Shearing, hedging or severe pruning shall not be permitted without prior

written permission from the City Engineer.

8. **The Contractor shall notify the City Engineer five (5) working days prior to the annual pruning, in writing, stating the exact location and date the annual pruning shall be performed.**

B. Shrub Fertilization

Shrubs shall be fertilized as necessary to maintain horticulturally acceptable health and color. Foliar fertilization may be performed when appropriate.

C. Shrub Replacement

1. All damaged, diseased (untreatable) or dead shrubs shall be replaced with the exact same species and size of plant material that existed.
2. Substitutions for any plant materials must have prior written approval by the City Engineer.
3. Original plans and specifications shall be consulted to determine correct identification of species.
4. All shrubs shall be guaranteed to live and remain in a healthy condition for no less than six (6) months from the date of installation, inspection and verification by the City Engineer.

- D. Care shall be taken to prevent soil build-up around the crown of shrubs.

### **XXXIII. TREE CARE**

A. Tree Trimming

1. The Contractor shall be responsible for all tree trimming to a height of twenty (20) feet.
2. All trees in the work site shall be maintained in their natural shapes. This work shall be accomplished in a manner which will insure that each individual tree is trimmed carefully to promote the tree's health and appearance.
3. All work shall be of the highest quality and performed in accordance with approved professional tree trimming standards.
4. All trees shall be pruned to remove or prevent encroachment where it blocks vision, or encroaches in any manner deemed undesirable by the City Engineer.
5. All trees shall be maintained free of dead, diseased and damaged branches



back to the point of breaking. Cuts must be made flush with the parent limb, or trunk to promote proper healing.

6. All sucker growth is to be removed from trees as it occurs.
7. The Contractor shall maintain all branches to avoid encroachment on sidewalks and curb lines at a height less than ten (10) feet.
8. All branches which encroach over private property shall be removed as directed.

B. Tree Staking

1. The Contractor shall, at no additional cost to the City, stake and tie all trees which require support.
2. Tree stakes shall be pentachlorophenol treated lodgepole pine not less than eight feet (8') in length for five-gallon size trees, and not less than ten feet (10') for fifteen-gallon size trees. Two (2) tree stakes are required per tree.
3. Guide wires will be of pliable, zinc-coated ten-gauge wire (three ties per tree), and should have a white P.V.C. sleeve for visibility.
4. Trees shall be secured to stakes with cinch ties or equivalent and shall be removed at the direction of the City.
5. Stakes shall not be placed closer than eight (8) inches from the tree trunk.
6. Stakes and ties shall be placed so no chafing of bark occurs and shall be checked frequently, and re-tied as necessary, to prevent girdling.

C. Tree Replacement

1. The Contractor shall be responsible for the complete removal and replacement of trees lost due to the Contractor's faulty maintenance or negligence, as determined by the City Engineer.
  - a. Replacement shall be made by the Contractor with the kind and size tree determined by the City Engineer.
  - b. Where there is a difference in value between the tree lost and the replacement tree, this difference will be deducted from the Contractor's payment.
  - c. In all cases the value of the trees lost will be determined by the City Engineer, using the latest American Shade Tree Conference guidelines for value determination.
2. Downed trees, due to any cause, shall be removed and the stump ground to a depth of grade level and re-filled the same day of identification or notification.
3. Trees lost from causes other than the Contractor's negligence shall be

replaced by the Contractor with a fifteen (15) gallon size tree and billed according to Section VIII. The City Engineer may specify a species of tree for replacement different from the one lost.

D. Fertilization

The Contractor shall fertilize trees as necessary to maintain horticulturally acceptable health and color.

E. Tree Irrigation

1. All trees shall be adequately irrigated to maintain a healthy and attractive appearance.
2. Irrigation run-off and overspray shall be minimized.
3. Trees shall be irrigated in a method which promotes deep root growth.

**XXXIV. GENERAL CLEAN-UP**

- A. The Contractor shall remove all trash and accumulated debris from the work sites. In addition, dog feces are also to be removed from the walkways, turf or ground cover areas.
- B. The Contractor shall remove all litter from the maintained area daily, five (5) days per week (Monday through Friday).
- C. The Contractor is responsible for removal of all weeds and grass growing in and around the curb and gutter area. The Contractor is responsible to insure the roadway is cleared of all dirt and debris within four (4') feet of the curb and gutter in all areas adjacent to maintenance responsibilities.
- D. The Contractor is responsible for cleaning walkways immediately following mowing and edging and by use of power sweeping or blower equipment not less than once per week. This includes removal of all foreign objects from surfaces such as gum, dog feces, grease, paint and graffiti. All walkway cracks and expansion joints shall be maintained weed and grass free at all times.
- E. The Contractor shall maintain all drains and catch basins free of siltation and debris at all times. All v-ditches and drainage areas shall be kept clean and edged weekly by the Contractor.
- F. The Contractor shall remove all accumulated leaves from all areas not less than once per week.

**XXXV. NATURAL AREAS**

- A. All natural areas shall be maintained in an existing state except for the following items, which shall be performed on a **weekly basis**:
  - 1. Remove all trash and debris, or other items as determined by the City Engineer, to a legal dumping site.
  - 2. Provide and maintain a fifteen (15) foot barren area adjacent to any improved area.
  - 3. Remove and/or repair any dead or broken branches or safety hazards within two (2) hours of identification or notification.
  - 4. Maintain all gates and entryways in a safe and usable condition.

#### **XXXVI. REPAIR OF WALKWAYS AND MISCELLANEOUS IMPROVEMENTS**

- A. All walkways shall be maintained by the Contractor so as to keep the integrity of the walking surface in a safe, unimpaired condition. The Contractor shall be entitled to additional compensation, subject to approval by City as stated in Section VIII.
- B. The Contractor will not be responsible for total replacement of walkways as a result of normal deterioration, but will be required to replace all improvements damaged by his negligence.
- C. It will be the responsibility of the Contractor to repair or replace miscellaneous improvements such as signs and mowing strips, or any other structural improvements within the work sites, unless otherwise specified. The Contractor shall be entitled to additional compensation, subject to approval from City, for these services as stated in Section VIII.

#### **XXXVII. EMERGENCY CALLS**

- A. The Contractor shall have the capability to receive and respond immediately to calls of an emergency nature during normal working hours and outside of normal working hours.
- B. Calls of an emergency nature received by the City Engineer shall be referred to the Contractor for immediate disposition.
- C. If the Contractor cannot be reached within two (2) hours the City will deduct from the monthly billing the cost of City forces, or other sources, used to repair the emergency.

#### **XXXVIII. EXTRAORDINARY SERVICES**

- A. The Contractor shall be responsible for providing extraordinary maintenance repairs to existing landscape and new landscape areas.
  - 1. Extraordinary maintenance shall include answering emergency calls as required. The Contractor shall respond to an emergency call within two (2) hours. The contractor shall maintain a 24 hours a day on-call service for emergency calls.
  - 2. The Contractor shall notify the City Engineer, or his representative by telephone within 24 hours of any emergency extraordinary work that is performed. Non-emergency extraordinary work requires written approval before the work is performed.
  - 3. The Contractor shall be compensated for extraordinary work as defined in Section VIII.
- B. In situations involving emergency repair work after normal work hours, the Contractor shall dispatch qualified personnel and equipment to reach the site within two (2) hours.
  - 1. The Contractor's vehicle shall carry sufficient equipment to effect safe control of traffic.
  - 2. When the Contractor arrives at the site, the Contractor shall set up traffic warning and control devices, if deemed necessary and make the required repairs.
- C. If a City representative is at the site when the Contractor arrives, the Contractor shall quickly evaluate the situation and discuss it with the representative.
- D. An emergency may be called by the following individuals or their designated representative, at any time for extraordinary services involving repair work:
  - 1. City Manager
  - 2. Public Works Director
  - 3. Police Chief
  - 4. City Engineer

#### **XXXIX. EXECUTION OF CONTRACT**

- A. The Contractor shall maintain all work under the Contract Agreement from date of award through termination of contract.
- B. **The date of award shall be determined by the City.**

- C. The date of termination shall be as stated on the Contract Agreement; however, the Contract is subject to extension or termination as described in these Specifications/Scope of Services and in the Contract Agreement.
- D. Approved Change Orders shall be completed within 30 days of being issued in accordance with Section VIII.
- D. Any documented punch list/inventory list shall be completed within two (2) weeks of the award of contract. If not completed within two (2) weeks, the documented punch list may be deemed as unsatisfactory performance and subject to termination procedures.

E. CONTRACT DOCUMENTS

In submitting a Proposal, the Company agrees to enter into an Agreement with the City *without exceptions to the City's standard agreement*. The City's standard agreement is **non-negotiable**, and a copy of the standard agreement is attached hereto as Attachment "C". **Any change to the standard agreement will deem the Proposal non-responsive.** In the event of a conflict exists between documents the following order of precedence shall apply:

- Agreement
- City of Banning's Request For Proposals
- Company's Response to the Request For Proposals
- Performance and Payment Bonds (Attachment C)

F. EXECUTION OF AGREEMENT

After contract award, the following shall be signed and returned to the City within fourteen (14) calendar days from the date the City mails, or by other means delivers said documents to the Company:

- Three (3) original copies of the Agreement in the form included herein, properly executed by the Company.
- Certificates of Insurance and Additional Insured Endorsement evidencing coverage as specified in the sample agreement.
- Confirmation of current business tax certificate.
- Bonds, if required.

In any event that day fourteen (14) of calendar days falls on Saturday, Sunday, a legal holiday for the State of California, or on days when the City is closed, the Contract Documents shall be delivered by the following working day.

No Agreement shall be binding upon the City until all documents are fully executed by the Company and the City.

**G. PERFORMANCE AND PAYMENT BONDS (attachment C)**

Contractor shall furnish to City a surety bond in an amount equal to 100 percent of Contract price as security for faithful performance of this Contract and shall furnish a separate bond in 100 percent of the Contract price as security for payment of persons performing labor and furnishing materials in connection with this Contract. Aforesaid bonds shall be in the form set forth in these contract documents.

The party to whom the Contract is awarded will be required to execute the Agreement and submit the Payment Bond, Contract Performance Bond, and Insurance Certificates on the required forms within fifteen (15) calendar days from the date when Notice of Award is delivered to the Bidder.

The Notice of Award shall be accompanied by the necessary Agreement, Bond, and Insurance Certificate forms. In case of failure of the bidder to execute the Agreement, the Owner may at his option consider the bidder in default; in which case the Bid Bond accompanying the proposal shall become the property of the Owner.

The Owner, within fifteen (15) days of receipt of acceptable Payment Bond, Contract Performance Bond, Insurance Certificates, and Agreement signed by the party to whom the Contract was awarded, shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the Owner not execute the Agreement within such period, the Bidder may by Written Notice withdraw his signed Agreement. Such notice of Withdrawal shall be effective upon receipt of the notice by the Owner.

**H. FAILURE TO EXECUTE THE AGREEMENT**

Failure to execute the Agreement and furnish the required insurance and business tax certificate, within the required time period shall be just cause for the rescission of the award. If bonds are also required, failure to furnish sufficient bonds shall cause rescission of the award. If the successful Company refuses or fails to execute the Agreement, the City may award the Agreement to the next qualified Company.

**I. CANCELLATION**

The City retains the right to cancel this RFP at any time, should it be deemed to be in the best interest of the City. No obligation either expressed or implied exists on the part of the City to make an award based on the submission of any proposals.

**XL. METHOD OF PAYMENT**



- A. The Contractor will be paid monthly for satisfactory work, as determined by the Public Works Director, performed under the Contract Agreement.
- B. Billing adjustments may be made where authorized by the Contract Agreement.
- C. On or about the first of each month the Contractor shall submit an invoice and all reports required in the Contract Agreement for work performed in the prior month.
  - 1. This invoice shall be in accordance with the contract price and shall become the basis for payment.
  - 2. This invoice shall be subject to review and approval by the City Engineer.
  - 3. All submitted invoices, approved by the City Engineer, shall require three (3) weeks for processing by the City of Banning, Finance Department.
  - 4. Any charges in the invoice not approved by the City Engineer shall not be paid by the City.

#### **XL1. DISCREPANCIES OR OMISSION**

- A. Should a bidder find discrepancies or omissions in the plans, specifications or other documents, or be in doubt as to their true meaning, he may request a written interpretation from the City Engineer or his designee.
- B. Any interpretation, or change in the proposed documents, will be made only by Addendum issued to each person to whom bid forms have been issued and shall become a part of the bid.

#### **XLII. MINOR MODIFICATION**

The City Engineer may modify these specifications with the joint approval of the Contractor.

#### **XLIII. CONTRACTOR NONCOMPLIANCE**

- A. If the City Engineer determines that there are deficiencies in the performance of the Contract Agreement, the City Engineer will provide a written notice to the Contractor stating the deficiencies and specifying a time frame to correct the specified deficiencies. This time frame shall be reasonable, as determined by the City Engineer, to correct the specified deficiencies.
- B. Should the Contractor fail to correct any deficiencies within the stated time frame, the City Engineer may exercise the following measures:

1. Withhold the entire or partial payment.
  2. Utilize City forces, or an alternate source, to correct the deficiency and deduct from the Contractor's payment the total cost, including City overhead.
  3. Deduct liquidated damages. Since it is extremely difficult to set a price on the extent of actual damages which result from failure to correct a deficiency within a stated time frame; a reasonable estimate of such damages shall be set at \$200 per day, or a portion thereof, for each deficiency which exceeds the stated time frame.
- C. The action above shall not be construed as a penalty but as an adjustment of payment to the Contractor to recover City of Banning cost due to the failure of the Contractor to complete or comply with the provisions of the Contract Agreement.
- D. The City Engineer shall decide all questions which arise as to the manner of performance and completion per schedule, acceptable fulfillment of the contract by the Contractor, interpretation of the specifications, and compensation to include completion of work by alternate sources.

#### **XLIV. PAYMENTS WITHHELD**

- A. The City may withhold entire or partial payment for reasons as follows:
1. Work required in the specifications which is defective, incomplete or not performed.
  2. Claims filed, or reasonable evidence indicating probable filing of claims, by supplier, etc.
  3. Failure of the Contractor to make payments to subcontractors, or for materials and/or labor.
  4. Reports, logs or written documentation required of the Contractor to be delivered to the City Engineer which are incomplete or not performed.

#### **XLV. WITHHELD CONTRACT FUNDS**

The Contractor may, at his sole cost and expense, substitute securities equivalent to any moneys withheld by the City to insure performance under the contract. Such securities shall be deposited with the City or with a State or Federally Chartered Bank as escrow agent who shall pay such moneys to the Contractor upon satisfactory completion of the contract. The Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon. Securities eligible for investment under this section shall include those listed in Public Contract Code Section 22300.

**XLVI. CONTRACT TERMINATION**

- A. The City reserves the right to terminate the Contract Agreement, without penalty, for cause immediately or without cause after thirty (30) days written notice thereof is delivered to the Contractor either personally or by mail addressed as shown on the purchase order form. The Contract Agreement may be terminated by the City of Banning, at any time and without cause, upon 30 days prior written notice to the party. The Contract Agreement may be terminated by the Contractor at any time and without cause, upon 90 days prior written notice to the City of Banning (Owner).
- B. In the event of such termination, the bonds required shall remain in effect for six (6) months after the date of termination to provide surety that any remedial work required at the time of termination will be completed.
- C. If the Contract Agreement is terminated by either Contractor or Owner, Contractor shall furnish the services necessary to continue normal operations, for a period up to ninety (90) days after the termination date. This ninety (90) day period will commence only at the Owner's request. Such period shall be for the purpose of continued supervision and of assisting in the placement and training of Landscape Maintenance District personnel to be furnished by the Owner or other persons. In such event, Owner shall pay Contractor at then existing rates of compensation during such ninety (90) day period.
- D. Upon termination by either Owner or Contractor, the Owner may employ, at Owner's sole discretion, as Owner's employees, all or any personnel then employed by the Contractor for Owner's operation of the Landscape Maintenance District No. 1.
- E. If the Contractor fails to meet the specifications of this contract for any fifteen (15) consecutive days, the City may at its option terminate the balance of this contract by written notice of termination to the Contractor. Notice of such termination shall take effect three (3) days after such notice is mailed.

**XLVII. COMPLAINTS FROM CITY OF BANNING**

- A. **The Contractor shall maintain a monthly written log of all complaints, which includes the date and time received and the action taken or the reason for non-action. The monthly log of complaints shall accompany the monthly invoice.**
- B. **All complaints shall be abated as soon as possible after notification; but in all cases within 24 hours, to the satisfaction of the City Engineer.**
- C. If any complaint is not abated within 24 hours, the City Engineer shall be notified

immediately of the reason for not abating the complaint, followed by a written report to the City Engineer within five (5) days.

- D. If the complaints are not abated within the time specified, or to the satisfaction of the City Engineer, the City Engineer may correct the specific complaint and the total cost incurred by the City of Banning will be deducted and forfeited from the payments owing to the Contractor from the City of Banning.

#### **XLVIII. HOLD HARMLESS AND CITY INSURANCE REQUIREMENTS**

The Contractor shall not commence work under the contract until it has secured all insurance required under this section. In addition, the Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

- A. Minimum Requirements. The contractor shall, at its expense, procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the Work hereunder by the Contractor, its agents, representatives, employees, or subcontractors. The Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage:
- B. Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); (3) *Workers' Compensation and Employers' Liability*: Workers' compensation insurance as required by the State of California and Employer's Liability Insurance.
- C. Minimum Limits of Insurance. The Contractor shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Contract/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; (3) *Workers' Compensation and Employer's Liability*: Worker's compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

- D. Insurance Endorsements. The insurance policies shall contain the following provisions, or the Contractor shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:
- E. General Liability. (1) The City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the Work or operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it.
- F. Automobile Liability. (1) The City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it.
- G. Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arises from work performed by the Contractor.
- H. All Coverages. Each insurance policy required by the Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and volunteers.
- I. Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insured's provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and



volunteers.

- J. Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. The Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents and volunteers; or (2) the Contractor shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.
- K. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City's current standards.
- L. Verification of Coverage. The Contractor shall furnish the City with original certificates of insurance and endorsements effecting coverage required by the Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
- M. Subcontractors. All subcontractors shall meet the requirements of this section before commencing Work. In addition, the Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**XLIX. CONTRACTOR IS AN INDEPENDENT CONTRACTOR: INDEMNIFICATION**

- A. The Contractor shall act under the contract as an Independent Contractor through the City of Banning and will not be an agent, or employee of the City.
- B. The Contractor shall not represent or otherwise hold out itself or any of its subcontractors, directors, officers, partners, employees or agents, to be an agent or employee of the City.
- C. The Contractor shall indemnify and otherwise hold harmless the City, its officials, officers, directors, employees, agents and other representatives, from all liability loss, or damage (including reasonable attorney's fees and other costs of defense resulting from damage or injury to persons or property caused, or claimed to have been caused, by acts or omissions of the contractor, or of any of its subcontractors, directors, officers, partners, employees, or agents in the course of,



or in connection with, the Contractor's performance under the contract).

- D. The parties agree to cooperate fully in the resolution of any claims for such liability, loss or damage.

**L. SUBCONTRACTOR/ASSIGNMENT OF CONTRACT**

- A. Reference is hereby made to the provisions of The Subletting and Subcontracting Fair Practices Act (Public Contracts Code Sections 4100. et. seq.).
- B. A copy of each subcontract, if in writing, or if not in writing, then a written statement signed by the Contractor, giving the name of the subcontractor, and the terms and conditions of such subcontract, shall be filed with the City before the subcontractor begins work. Each subcontract shall contain a reference to this Contract Agreement between the City and the Contractor, and the terms of that Contract Agreement between the City and the Contractor and all parts thereof shall be made a part of such subcontract insofar as applicable to the work covered thereby. Each subcontract shall provide for its annulment by the Contractor at the order of the City, if, in the City's opinion, the subcontractor fails to comply with the requirements of the principal contract insofar as the same may be applicable. Nothing herein contained shall create any contractual relation between any subcontractor and the City or relieve the Contractor of any liability or obligation hereunder.
- C. The Contractor shall not assign, transfer, convey or otherwise dispose of this contract, or of his rights or interests in or to the same or any part hereof without the previous consent in writing of the City. If the Contractor, without such previous written consent, assigns, transfers, conveys, or otherwise disposes of the contract, or of his rights or interests therein, the contract may, at the option of the City, be terminated and revoked, and the City shall thereupon be relieved and discharged from any and all liability and obligations arising out of the same to the Contractor, and to his assignee or transferee. No right under the contract, nor any right to any money to become due hereunder, shall be asserted against the City in law or equity by reason of any so-called assignment of the contract, or any part thereof unless authorized by the written consent of the City.

**LI. COMPLIANCE WITH THE LAW**

- A. The Contractor agrees that his performance under this contract shall comply with all applicable laws of the United States of America, the State of California, the County of Riverside, the City of Banning and any other political entity having jurisdiction over the activities of the contractor.
- B. **The Contractor State License Board for the State of California has administratively determined, in writing, that a C-27 Landscape Contractor**

**License is required to provide the service as set forth in the contract and specifications. Therefore, each bidder will be required to hold a valid C-27 Landscape Contractor License.**

- C. The State of California Department of Food and Agriculture has advised the City of Banning of the following:
  - 1. Prior to any pesticide application a written recommendation from a valid, licensed California Agricultural Pest Control Advisor must be secured.
  - 2. A valid California Agricultural Pest Control Operators License is required to apply chemicals during the landscape maintenance operation.
  - 3. Therefore, each bidder shall be required to have valid Agricultural Pest Control Licenses, or indicate in writing how they shall comply with State and California Food and Agricultural codes.

## **LII. PAYROLL**

- A. Section 1776, Chapter 1 of Division 2, from the California Labor Code requires that each Contractor and Subcontractor keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and each week and the actual per diem wages paid each journeyman, apprentice or worker employed by him.
- B. Payrolls must meet the attached Public Works Contract requirements and be submitted as required and stated. The employee's own payroll records shall be available for inspection, and a copy shall be made available to the employee or his authorized representative, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standard.
- J. Pursuant to Labor Code Section 1778.8, the Contractor agrees to pay travel and subsistence payments to each workman needed to execute the work in accordance with the applicable collective bargaining agreements filed with the Department of Industrial Relations.

## **LIII. LABOR STRIKE**

- A. It will be the responsibility of the Contractor to provide continuous maintenance services, without any interruption.
- B. In case of any labor strikes, the Contractor shall provide other means, at its own cost, to provide a comparable continuous service as if there were no strike.
- C. Failing to do so will cause the City to take whatever action is deemed necessary to provide such service and the cost will be borne by the Contractor.

#### LIV. PREVAILING WAGES PROVISION

##### Prevailing Wages Requirements

In responding to this request, all professional firms or contractors agree to comply with prevailing wage requirements, the Department of Industrial Relations, as further described below:

1. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates, that Contractor and all subcontractors must be registered and pay the registration fee with the Department of Industrial Relations (DIR), Contractor shall be subject to compliance monitoring and enforcement by the DIR, and the performance of other requirements on "Public Works" and "Maintenance" projects. If the services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

##### **California Department Industrial Relations Registrations**

1. In 2014, the California legislature enacted several laws impacting public works contracting. Senate Bill 854 (SB 854) creates changes in the way DIR monitors prevailing wage requirements. All contractors and subcontractors must register with the DIR and meet DIR requirements before bidding on public works contracts in California. No contractor or subcontractor may be awarded a contract for public work or public works project unless registered with the DIR.
2. All contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement).
3. Public Work Contractors/Subcontractors can register with the DIR at [www.dir.ca.gov/Public-Works/](http://www.dir.ca.gov/Public-Works/).

**In accordance with the provisions of the California Labor Code, not less than the general prevailing rate of per diem wages for each craft, or type of workman and mechanic needed to execute the contract in the locality in which the work is to be performed, and not less than the general prevailing rate of per diem wages for holidays and overtime work, as determined by the**

**Director of Industrial Relations of the State of California, shall be paid to all workmen employed. Wage rates to be paid shall be the most current of the General Prevailing Wage Determinations made by the Director of Industrial Relations, pursuant to California Labor Code, Part 7, Chapter I, Article 2, Sections 1770, 1773, and 1773.1. It is the Contractor's responsibility to ensure the current wage rates in effect are being paid on the various crafts used on this Project.**

**LV. LABOR DISCRIMINATION**

- A. Attention is directed to Section 1735 of the Labor Code, as added by Chapter 643, Statutes of 1939, which reads as follows:

“No discrimination shall be made in the employment of persons upon Public Works because of the race, religion, creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex of such persons, except as provided in Section 12940 of the Government Code, and every Contractor for Public Works violating this section is subject to all the penalties imposed for a violation of this chapter.”

**LVI. APPRENTICESHIP STANDARD**

Where required under law, the prime Contractor on this project shall assume full responsibility for compliance with apprenticeship standards as established by Section 1777.5 of the California State Labor Code.

**LVII. PATENTS**

The Contractor shall assume all responsibilities arising from the use of patented materials, equipment, devices, or processes used on, or incorporated in, the work.

**LVIII. ANTI-TRUST CLAIMS**

In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 of Part 2 of Division 7 of the Business and Professions Code), arising from the purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

**LIX. NOTICES**

- A. Any notice, demand, request, consent, approval, or communication that either party desires, or is required to give to the other party or any other person, shall be in writing and either served personally, sent by prepaid, first-class mail, or by facsimile followed by mailing of said notice.
- B. Any notice demand, request, consent, approval, or communication that either party desires, or is required to give to the other party, shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address.
- C. Notice shall be deemed communicated two (2) City working days from the time of mailing if mailed as provided in this paragraph.
- D. Address for notification:
  - 1. City of Banning  
 Attn: Public Works Director/City Engineer  
 Public Works Department  
 P. O. Box 998  
 Banning, CA 92220
  - 2. Contractor: \_\_\_\_\_  
 ATTN: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**ATTACHMENT “A”****LOCATION MAP OF LANDSCAPE MAINTENANCE DISTRICT NO. 1**

NOTE: Numbers one through sixteen are currently part of LMD No.1; Tract No. 36939 is NOT included yet.



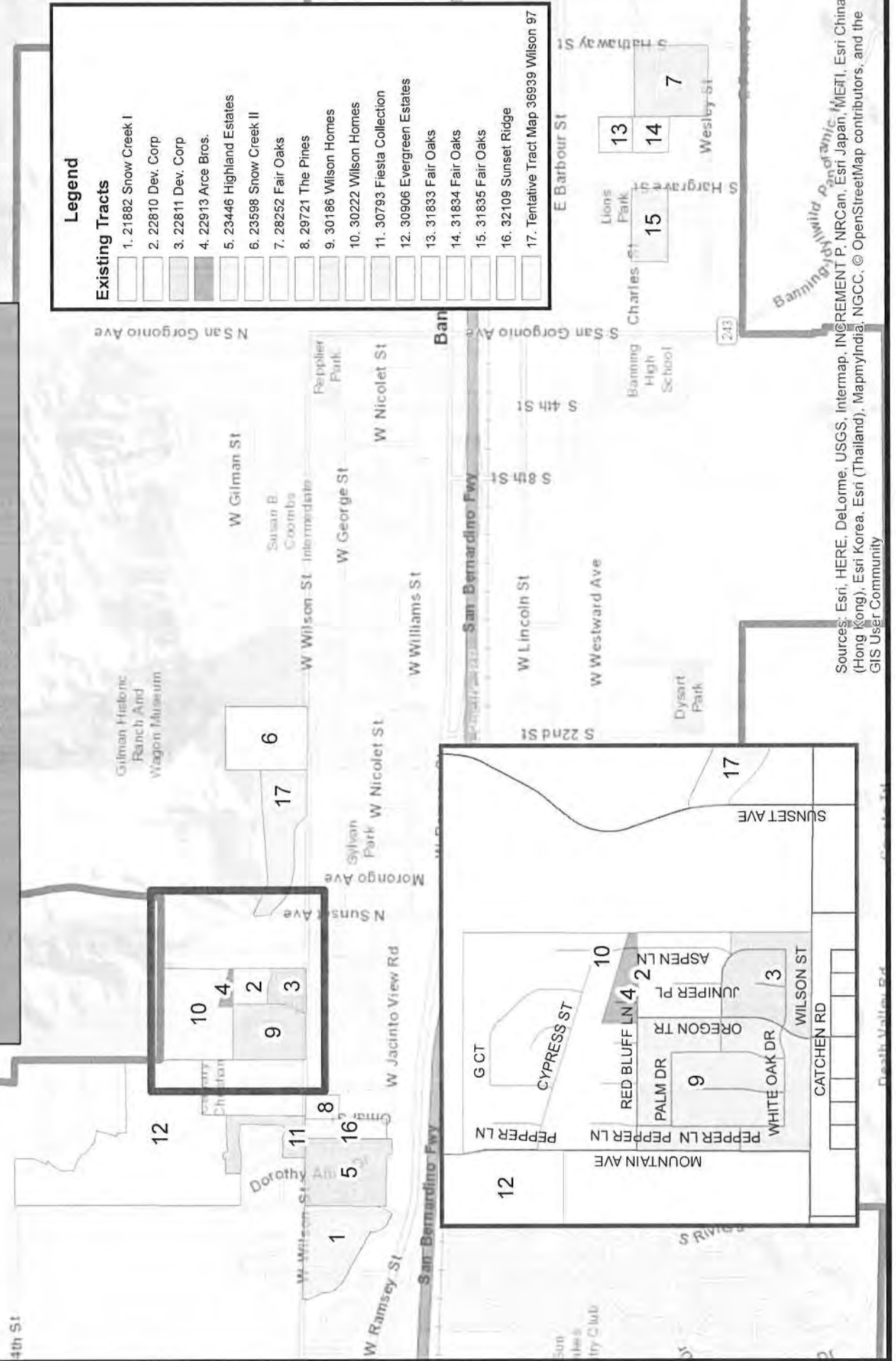
# Map of Landscape Maintenance District No. 1 2019-2020



## Legend

### Existing Tracts

1. 21882 Snow Creek I
2. 22810 Dev. Corp
3. 22811 Dev. Corp
4. 22913 Arce Bros.
5. 23446 Highland Estates
6. 23598 Snow Creek II
7. 28252 Fair Oaks
8. 29721 The Pines
9. 30186 Wilson Homes
10. 30222 Wilson Homes
11. 30793 Fiesia Collection
12. 30906 Evergreen Estates
13. 31833 Fair Oaks
14. 31834 Fair Oaks
15. 31835 Fair Oaks
16. 32109 Sunset Ridge
17. Tentative Tract Map 36939 Wilson 97



## **ATTACHMENT “B”**

BID PROPOSAL AND BID PACKAGE  
CHECKLIST DOCUMENTS (Required with Bid)

## INVITATION TO BID

## BIDDER'S CHECK LIST

**INSTRUCTIONS TO BIDDER**

## I. GENERAL

Bidder are advised that notwithstanding any instructions or inferences elsewhere in this Invitation to Bid only the documents shown and detailed on this sheet need be submitted with and made part of their bid. **Other documents may be required to be submitted after bid time, but prior to award.** Bidders are hereby advised that failure to submit the documents shown and detailed on this sheet MAY RENDER THE BID NON-RESPONSIVE.

## II. REQUIRED DOCUMENTS FOR BID:

BID MAY NOT BE CONSIDERED if the following documents and/or attachments are not completely filled out and submitted with the bid.

NOTE: ALL OF THESE ITEMS ARE REQUIRED.

1. All Bid Proposal pages included in this section, **MUST BE MANUALLY SIGNED.**
2. Signed Pages 1 through 5 of the **Public Works Contract Requirements** (DIR, Prevailing Wages) attached.
3. Bid Security Bond, Certified Check, Cashier's Check, shall be submitted with the Bid Proposal Form in the amounts indicated.

**EX PARTE COMMUNICATIONS CERTIFICATION**

Please indicate by signing below one of the following two statements. **Only sign one statement.**

I certify that Proposer and Proposer's representatives have not had any communication with a City Councilmember concerning this RFP at any time after the date and time that this RFP was publically advertised.

---

**OR**

I certify that Proposer or Proposer's representatives have communicated after the date and time that this RFP was publically advertised with a City Councilmember. A copy of all such communications is attached to this form for public distribution.

---

**DISQUALIFICATIONS QUESTIONNAIRE**

The Consultant shall complete the following questionnaire:

Has the Consultant, any officer of the Consultant, or any employee of the Consultant who has proprietary interest in the Consultant, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

Yes \_\_\_\_\_ No \_\_\_\_\_

If the answer is yes, explain the circumstances in the following space.

**DISCLOSURE OF GOVERNMENT POSITIONS**

Each Proposer shall disclose below whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months. List below or state "None."



## INDEMNITY AND INSURANCE STATEMENT

### Summary of Indemnity and Insurance Requirements

1. These are the Indemnity and Insurance Requirements for Contractors providing services or supplies to the City. By agreeing to perform the work or submitting a proposal, you verify that you comply with and agree to be bound by these requirements. If any additional contract documents are executed, the actual Indemnity language and Insurance Requirements may include additional provisions as deemed appropriate by the City.
2. You should check with your Insurance advisors to verify compliance and determine if additional coverage or limits may be needed to adequately insure your obligations under this agreement. These are the minimum required and do not in any way represent or imply that such coverage is sufficient to adequately cover the Contractor's liability under this agreement. The full coverage and limits afforded under Contractor's policies of insurance shall be available to the City and these Insurance Requirements shall not in any way act to reduce coverage that is broader or includes higher limits than those required. The Insurance obligations under this agreement shall be: 1 – all the Insurance coverage and limits carried by or available to the Contractor; or 2 – the minimum Insurance Requirements shown in this agreement, whichever is greater. Any insurance proceeds in excess of the specified minimum limits and coverage required, which are applicable to given loss, shall be available to the City.
3. Contractor shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to the City before work begins. The City reserves the right to require full-certified copies of all Insurance coverage and endorsements.

### I. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith. Contractor shall agree that their defense and indemnification obligations are in addition to, and are not limited by, the Insurance obligations in the agreement.

Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

## II. INSURANCE

The City of Banning will require the following to approve insurance for your contract:

### 1) Insurance Limits:

- (a) General Liability insurance with limits of not less than \$1,000,000 for bodily injury and property damage; \$1,000,000 for personal and advertising injury; \$2,000,000 products and completed operations aggregate and \$2,000,000 general aggregate.
- (b) Auto Liability insurance endorsed for "any auto" with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.
- (c) Professional Liability (Errors and Omissions) insurance appropriate to Consultant's profession, with limits of liability of not less than \$1,000,000 per claim/occurrence and \$1,000,000 policy aggregate. The "Retro Date" must be shown for the Professional Liability insurance. **(only required if contract involves the rendering of a professional service).**
- (d) Workers' Compensation insurance as required under the California Labor Code.
- (e) Employer's Liability insurance with limits of liability of not less than \$1,000,000, each accident; \$1,000,000 disease each employee; and \$1,000,000 disease policy limit.  
\*Limits can be adjusted by the City based on services provided.

### 2.) Insurance Requirements:

- (a) California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide.

(b) Certificate holder should appear as follows:

City of Banning  
Attn: Purchasing Division  
99 E. Ramsey Street  
Banning, CA 92220-4837

(c) The certificate of insurance should read *"The City of Banning, its officers, officials, employees and agents are additional insured with respects to General Liability and Auto Liability insurance. This insurance is primary, and our obligations are not affected by any other insurance carried by such additional insured whether primary, excess, contingent, or on any other basis. Waiver of subrogation for Workers' Compensation insurance with respects to the City of Banning, its officers, officials, employees and agents."*

(d) The additional insured coverage under the contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

3.) Insurance Documents:

(a) Include an Additional insured endorsement, with primary and non-contributory language or a primary insurance endorsement, for General Liability insurance **including ongoing operations and completed operations (i.e., CG 20 10, CG 20 33, or CG 20 38)**. The additional insured should read, *"The City of Banning, its officers, officials, employees, agents and volunteers"*. Examples of primary insurance language are *"Such insurance as is afforded by the policy is primary and any other insurance shall be excess and not contribute to the insurance afforded by this endorsement"* or *"This insurance is primary, and our obligations are not affected by any other insurance carried by such additional insured whether primary, excess, contingent, or on any other basis"*. The endorsement number needs to be included in the accord description of certificate of insurance.

(b) Include an Additional insured endorsement for Auto Liability insurance. The additional insured should read, *"The City of Banning, its officers, officials, employees and agents."* The endorsement number needs to be included in the accord description of certificate of insurance.

(c) Include a Waiver of subrogation endorsement for Workers' Compensation insurance should read, *"the City of Banning, its officers, officials, employees and agents."* The endorsement number needs to be included in the accord description of certificate of insurance.

(d) Include a copy of the Declarations & Policy Endorsements page for the GL policy.

**I have read and understood the above requirements and agree to be bound by them for any work performed for the city.**

**Authorized signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**BID SCHEDULE FORM, sheet one of two**  
 “Operation and Maintenance of Landscape Maintenance District No. 1”

ITEM NO.	TRACT NO.	SPECIFIC LOCATION	UNIT COST (\$)/ MONTH
1.	21882	Per Site Visit	
2.	22810	Per Site Visit	
3.	22811	Per Site Visit	
4.	22913	Per Site Visit	
5.	23446	Per Site Visit	
6.	23598	Per Site Visit, includes Moonbeam Drive frontage	
7.	28252	Hathaway Street, per Plans & site visit	
8.	28252	Retention Basin, per Plans & site visit	
9.	29721	Per Site Visit and Plans	
10.	30186	Retention Basin, per Plans & site visit	
11.	30186	Mountain Avenue, Wilson Street and Interior Streets, except Retention Basin, per Plans & site visit	
12.	30222	Richard Sanchez Park, per Plans & site visit	
13.	30222	Mountain Avenue and interior streets, per Plans & site visit	
14.	30793	Per Site Visit and Plans	
15.	31833	Per Site Visit and Plans	
16.	31834	Per Site Visit and Plans	
17.	31835	Per Site Visit and Plans	
18.	32109	Per Site Visit and Plans	
19.	30906	Retention Basin, per Plans & site visit	
20.	30906	Mountain Avenue, per Site Visit and Plans	
		<b>GRAND TOTAL:</b>	

Note: “Per plans” means the Tract has improvement plans on file. Tract No. 30642 shown as No. 17 on the LMD No. 1 Map is not included; it has not been accepted yet.

**BID SCHEDULE FORM, sheet two of two**

Total (all 20 locations) Lump Sum Cost per Month: \_\_\_\_\_  
 (Amount in Numbers)

\_\_\_\_\_  
 (Amount in Words)

Total (all 20 locations) Lump Sum Cost for Twelve Months: \_\_\_\_\_  
 (Amount in Numbers)

\_\_\_\_\_  
 (Amount in Words)

\_\_\_\_\_  
 Signature and Title

Note: A yearly CPI increase will be allowed per Section VI of the Contract and Specifications. The City of Banning reserves the right to reduce the Scope of Services at any time and reduce the contract award amount if Public Works Department staff decides to maintain all or some of the tracts listed in the Landscape Maintenance District No. 1, or portions of said tracts. It also reserves the right to not award the initial contract at all.





# CITY OF BANNING

## Bidder's Reference List

### For Invitation to Bid for Landscape Services

**List up to five (5) clients** (government or private) for which you currently supply landscape maintenance services (select clients with similar landscaping facilities and square footage to the proposed Landscape Maintenance District No. 1).

Bidder is required to supply the following information. Additional sheets may be attached if necessary.

<u>NAME</u>	<u>ADDRESS</u>	<u>APPROX. SQ FOOTAGE</u>	<u>TYPE OF FACILITY</u>	<u>CONTRACT DATES</u>	<u>CONTACT PERSON</u>	<u>TELEPHONE</u>
1. _____	_____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____	_____	_____
5. _____	_____	_____	_____	_____	_____	_____

**BIDDER ACKNOWLEDGMENT**

There is enclosed herewith bid security or bond in the following form (check one):

- ☐ Cash (10%)  
☐ Cashier's Check or Certified Check (10%)  
☐ Bond - 1 Surety (10%)

in the sum of \_\_\_\_\_ (\_\_\_\_) percent of the base bid (annual contract, 12 months) of \_\_\_\_\_ (\$ \_\_\_\_\_), made payable to the order of the City of Banning, and the undersigned agrees that in case of his failure to execute the necessary Contract and furnish the required bonds and insurance certificates, the cashier's check or surety bond and the money payable thereon shall be and remain the property of the CITY OF BANNING.

**WITHDRAWAL OF BID**

The Bidder agrees that this Bid shall be good and may not be withdrawn for a period of forty-five (45) calendar days after the scheduled closing time for receiving Bids.

**VISITING THE SITE**

The undersigned has thoroughly examined the Specifications and Addenda (if any), has visited the site, and is thoroughly familiar with the contents and all of the conditions thereof. The undersigned is aware of and will observe all federal, state and city regulations enforced for landscape services, including NPDES (stormwater discharge) requirements. Applicable landscape BMPs listed in the California Stormwater BMP Handbook for Municipal activities must be complied with.

**DESIGNATION OF SUBCONTRACTORS**

In compliance with the provisions of Section 4100 - 4108 of the Public Contract Code of the State of California, and any amendments thereto, each Bidder shall set forth below, the name and location of the mill, shop, or office of each subcontractor who will perform work or labor, or render service to the Contractor in an amount in excess of one-half ( $\frac{1}{2}$ ) of one (1) percent of the total Bid to be performed under the Contract, he shall be deemed to have agreed to perform such portion himself and he shall not be permitted to subcontract that portion of the work except under conditions permitted by law.

**LIST OF SUBCONTRACTORS**

Subletting or subcontracting of any portion of the work as to which no subcontractor was designated in the original Bid shall only be permitted in case of public emergency or necessity, or otherwise permitted by law, and then only after a finding reduced to writing as a public record of the Owner.

## BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are hereby held and firmly bound unto the CITY OF BANNING as Owner in the penal sum of \_\_\_\_\_ for payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed, this \_\_\_\_\_ day of \_\_\_\_\_, 2019. The Condition of the above obligation is such that whereas the Principal has submitted to the CITY OF BANNING a certain Bid, attached hereto and hereby made a part hereof to enter into a contract in writing for the

PROJECT NO. 2018-07W, "ALTITUDE VALVE AT SOUTHWEST RESERVOIR"

NOW, THEREFORE,

A. If said Bid shall be rejected, or

B. If said Bid shall be accepted and the Principal shall execute and deliver, within fifteen (15) days after the Notice of Award, a contract in the form attached hereto (properly completed in accordance with said Bid) and shall furnish a Bond for his faithful performance of said Contract and for the payment of all persons performing labor or furnishing materials in connection therewith, the required Insurance Certificates, and shall in all other respects perform the agreement created by the acceptance of said Bid, then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims there under shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligation of said Surety and its Bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorney's fee to be fixed by the court.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Two Witnesses  
(If Individual):

Principal: \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

ATTEST (If Corporation):

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

SURETY: \_\_\_\_\_

By: \_\_\_\_\_

Title \_\_\_\_\_

ATTEST:

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

IMPORTANT: Surety companies executing Bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in Section 105 of the California Insurance code.

Any claims under this bond may be addressed to:

(Name and Address of Surety)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name and address of Agent or Representative in California, if different from above)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Telephone number and address of Surety and Agent or Representative in California)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

INVITATION TO BID  
CITY OF BANNING  
STATEMENT OF QUALIFICATIONS AND INFORMATION FOR  
LANDSCAPE MAINTENANCE SERVICES

No bid will be considered unless this document and all schedules and attachments specified are completed in full. All applicable items must be filled out.

Bidder is required to supply the following information. Additional sheets may be attached if necessary.

1. Name of company \_\_\_\_\_  
Address \_\_\_\_\_
2. Authorized representative  
Title \_\_\_\_\_  
Telephone no. \_\_\_\_\_  
Address (if different from above) \_\_\_\_\_
3. Type of organization:  
Corporation \_\_\_\_\_ Partnership \_\_\_\_\_  
Joint Venture \_\_\_\_\_ Other (if other explain) \_\_\_\_\_  
If corporation, organized under the laws of the State of California
4. List names and addresses of all members of the Bidder's firm or names and titles of all officers of the corporation  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. Number of years experience as a contractor in landscape services work: \_\_\_\_\_
6. Fill in the attached Bidder's Reference List.
7. Contractor shall submit detailed description of all hiring, training, testing, and disciplinary policies and procedures used by this firm.

**PUBLIC WORKS CONTRACT REQUIREMENTS (DIR)**

**CONTRACTOR MUST RETURN PAGES 1 THROUGH 5 WITH THE BID PACKAGE**





# PUBLIC WORKS CONTRACT REQUIREMENTS



<b>Project Title:</b>	
<b>Invitation for Bid #:</b>	<b>Contract Duration:</b> _____ to _____
<b>Description of Project:</b>	
<b>Labor Compliance Contact Information:</b>	Name: Physical Address:  Mailing Address:  Email: Phone:
<b>Prime Contractor:</b>	Name: Physical Address:  Mailing Address:  Email: Phone:
<b>Contractor License #:</b>	<b>Contract Manager:</b>
<b>PWCR #:</b>	<b>Project Manager:</b>

## POSTERS/NOTICES

Contractors are required to post all required state posters on the jobsite in an area accessible to all workers, including subcontractors. Posters must be readable and placed in visible areas allowing workers to access the posters before, during, and after work shifts. Jobsites with multiple locations must include a portable poster board to ensure continued access to the information. Posters placed in foreman, supervisor, or employee vehicles, in an offsite job trailer, or inside a temporary restroom **do not** meet the posting requirement.

☐ State general prevailing wage determinations in effect on date advertised

General prevailing wage determination \_\_\_\_\_

Journeyman and Apprentice Prevailing Wage Rates can be accessed at the following website:  
<http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm> Reference: California Labor Code Section (LC §) 1773.2

**PREVAILING WAGE REQUIREMENTS**

- ☐ All workers employed in the execution of a public works project, including sole proprietors, partners, and corporate officers, must be paid not less than the specified prevailing wage rates for the type of work performed. *Reference: LC §1774*
- ☐ Contractors utilizing an entity for the purpose of hauling or delivery of ready-mixed concrete are required to enter into a written subcontract agreement with the entity. *Reference: LC § 1720.9*
  - ⇒ Workers employed in the hauling and delivery of ready-mixed concrete must be paid not less than the specified prevailing wage for the type of work performed in the geographic location of the plant/batch facility. *Reference: LC § 1720.9*
- ☐ Overtime must be paid for all hours over 8 in a calendar day and 40 hours in a week. Violations may subject the contractor to a state penalty. *Reference: LC §1810-1815*
- ☐ Saturday/Sunday premium rates are applicable as indicated on prevailing wage determinations.
- ☐ When required, shift differential rates must be paid for classifications which include a shift determination.
- ☐ **State Prevailing Wages**
  - \* Single asterisk indicates that this wage determination can be used for the life of the contract.
  - \*\*Double asterisk indicates that this wage determination includes predetermined increases.
- ☐ Subsistence/Zone pay must be shown on the fringe benefit statement if not shown on certified payroll.
  - ⇒ The contractor must make applicable travel and subsistence payments in accordance with information on file with the California Department of Industrial Relations (DIR) for classifications utilized. Contact the Prevailing Wage Unit at (415) 703-4774 or available on DIR's Web site at: <http://www.dir.ca.gov/dlsr/PWD/index.htm> *Reference: LC §1773.1*
- ☐ Contractors violating prevailing wage requirements are subject to a penalty to be paid in addition to any wage underpayments. Liquidated damages in the amount of the wage underpayments may also apply. *Reference: LC §1775 and §1742.1*

**PAYROLL REQUIREMENTS**

- ☐ Labor Classification Survey form shall be completed by the prime and subcontractors and Submitted by the Prime to the City at the beginning of the project.
- ☐ All labor compliance documents submitted must be complete and accurate, and require the correct contract number.

- ☐ Certified payrolls must be completed weekly and documents are due with invoice. *Reference: LC §1771.5*
- ☐ Certified payrolls must include ALL information as required by Labor Code 1776, *Contractor/Subcontractor Payroll. Reference: LC §1776*
- ☐ Certified payrolls shall display employee social security numbers OR if desired, the last 4-digits of the SSN may appear on the payroll documents if a "Master Key" of social security number is provided.
- ☐ Classification and group numbers are required on all payrolls (i.e., Laborer-Group 1, Plumber-Pipefitter, etc.). When work classification is not shown or a misclassification has been identified, the City of Banning will determine the wage rate based on duties performed. *Reference: LC §1776*
- ☐ Payrolls must clearly show how gross and net wages are calculated, including fringe benefits.
- ☐ A *Statement of Compliance* is due with each weekly payroll. Boxes must be marked indicating if benefits are paid to a fund or to the employee(s). All deductions marked "other" must be explained on the payroll or the Statement of Compliance (i.e. garnishments, tools, etc.).  
*Reference: LC §1776*
- ☐ All deductions marked "other" (i.e. garnishments, tools, etc.) must be explained on the payroll or the Statement of Compliance. Source documents to confirm the "other" deduction that meet requirements of an authorized payroll deduction are to be submitted on the first payroll which the deduction appears. Authorization for "Other" Payroll Deduction form is required to be submitted to the City.
- ☐ A *Fringe Benefit Statement (Statement of Employer Payment) form*, must be completed and signed showing hourly rates and the name and address of the plan(s) whenever fringe benefits are paid to a plan, fund or program. The form must be submitted with the first payroll and when fringe benefits or subsistence amounts change. Statements must be specific to the contract. *Reference: LC §1773.1*
- ☐ All contractors are required to provide itemized wage statements (check stubs) to employees.
- ☐ A *Statement of Non-Performance* is required during the project weeks that work is not performed.
- ☐ Failure by the prime to submit the required reports or documents will result in all payments due to the contractor being withheld until the next invoice after compliance. *Reference: LC §1771.5*
- ☐ City of Banning *Owner-Operator Listing* form, may be used when owner-operators are performing on the project. *Reference: LC §1776*
  - ⇒ The contractor employing an equipment owner-operator must complete the owner-operator listing. Forms will not be accepted from the equipment owner-operator unless the hiring contractor signs the owner-operator Statement of Compliance.
- ☐ Whenever an entity is used in the hauling or delivery of ready-mix concrete the following documentation must be provided:
  - ⇒ A copy of the written agreement between the entity hauling/delivering ready-mix

concrete and the contractor is required to be submitted with the first payroll which the entity performed work.

- ⇒ The contractor is required to submit a copy the driver's certified time records to the City of Banning with the payroll submission. *Reference: LC § 1720.9*

- ☐ Certified payrolls may be maintained and submitted electronically utilizing the Department of Industrial Relations Reporting form (State).
  - ⇒ Submissions must be in an unmodifiable PDF format and contain all information required by California Labor Code Section 1776.
  - ⇒ The prime contractor and each subcontractor must complete and submit a Certification of Authorization form to the City of Banning certifying that the principals and authorized payroll officer understand the requirements.
  - ⇒ Certified payrolls shall be submitted to the City of Banning and must only contain only one week ending per submittal. Electronic submittals may be sent to [hstuart@ci.banning.ca.us](mailto:hstuart@ci.banning.ca.us) or hardcopies are acceptable as well.
  - ⇒ The prime contractor shall be responsible for providing all subcontractor payroll records to the City.

## APPRENTICES

- ☐ All requirements of California Labor Code, Section 1777.5 apply for classifications which DIR has identified as an apprenticeship craft, including the following:
  - ⇒ Submit DIR's Division of Apprenticeship Standards (DAS) form DAS-140, *Public Works Contract Award Information*, to the applicable apprenticeship committee prior to start of work. Form may be downloaded at: <http://www.dir.ca.gov/DAS/PublicWorksForms.htm>
  - ⇒ Classifications that are an "apprenticable craft" shall contribute training funds to an approved training program.
  - ⇒ Training fees MUST be sent to a state-approved apprenticeship program or the California Apprenticeship Council.
  - ⇒ Apprentices must be paid the prevailing wage rate applicable to the classification in which they are registered and employed.
- ☐ Complaints or violations regarding apprentice ratios will be referred to DAS.
- ☐ Proof of registration in a state-approved apprenticeship program will be required and must be submitted with the first payroll on which apprentices appear. *Reference: LC §1777.5 An Apprentice Certification Letter is acceptable proof.*
- ☐ If an apprentice is required but not provided by the Division of Apprenticeship, then solicitations submitted by the contractor/subcontractor b to the DAS attempting to obtain an apprentice shall be submitted to the City.

### ACKNOWLEDGMENT

**I acknowledge that I have been informed and am aware of the Public Works requirements listed above and that I am authorized to make this certification.**

**CONTRACTOR :** \_\_\_\_\_

**AUTHORIZED NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**AUTHORIZED SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**PHYSICAL ADDRESS:** \_\_\_\_\_

**MAILING ADDRESS:** \_\_\_\_\_

**EMAIL ADDRESS:** \_\_\_\_\_ **PHONE:** \_\_\_\_\_

**PAYROLL CONTACT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**E-MAIL ADDRESS:** \_\_\_\_\_ **PHONE:** \_\_\_\_\_



# CITY OF BANNING LABOR CLASSIFICATION SURVEY



PROJECT NAME: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

SUBCONTRACTOR: \_\_\_\_\_

## CLASSIFICATIONS

BRICKLAYER \_\_\_\_\_

LABORERS: GROUP 1 \_\_\_\_\_

CARPENTERS \_\_\_\_\_

GROUP 2 \_\_\_\_\_

CEMENT MASONS \_\_\_\_\_

GROUP 3 \_\_\_\_\_

DRYWALL HANGERS \_\_\_\_\_

GROUP 4 \_\_\_\_\_

ELECTRICIANS \_\_\_\_\_

GROUP 5 \_\_\_\_\_

IRON WORKERS \_\_\_\_\_

POWER EQUIPMENT OPERATORS

PAINTERS \_\_\_\_\_

GROUPS 1-21 \_\_\_\_\_

PLUMBERS \_\_\_\_\_

ROOFERS \_\_\_\_\_

SHEET METAL WORKERS \_\_\_\_\_

TRUCK DRIVERS

SOFT FLOOR LAYERS \_\_\_\_\_

GROUPS 1-11 \_\_\_\_\_

TILE LAYERS \_\_\_\_\_

LANDSCAPE / IRRIGATION  
FITTERS \_\_\_\_\_

LABORERS – STRIPPING \_\_\_\_\_

ADDITIONAL CLASSIFICATIONS  
(Must be approved by the City)

PLASTERER \_\_\_\_\_

CLASSIFICATIONS

OTHERS \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_





## CERTIFICATION OF UNDERSTANDING AND AUTHORIZATION



Project No: \_\_\_\_\_

Project Name: \_\_\_\_\_

This is to certify that the principals, and the authorized payroll officer, below, have read and understand the minutes of the Pre-Construction Conference and the labor standards clauses pertaining to the subject project.

The following person(s) is designed as the payroll officer for the undersigned and is authorized to sign the Statement of Compliance, which will accompany our weekly-certified payroll reports for this project.

\_\_\_\_\_  
Print or Type Payroll Officer (Name)

\_\_\_\_\_  
Payroll Officer (Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Company Name (Contractor/Sub-contractor)

\_\_\_\_\_  
Contractor/Sub-contractor License Number

\_\_\_\_\_  
Print or type Owner/CEO (Name)

\_\_\_\_\_  
Signature (Owner/CEO)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



## AUTHORIZATION for "OTHER" PAYROLL DEDUCTION



Project No: \_\_\_\_\_

Project Name: \_\_\_\_\_

Employee Name: \_\_\_\_\_

Employee Address: \_\_\_\_\_

Employee Phone Number :(    ) \_\_\_\_\_

I hereby authorize \_\_\_\_\_ to deduct the following  
(Name of Company)  
from my paycheck:

Amount of deduction:	\$ _____
Start date of deduction:	\$ _____
Frequency of deduction:	\$ _____
Termination date of deduction:	\$ _____

Reason for deduction: \_\_\_\_\_

This certification has been executed under penalty of perjury on this \_\_\_\_\_ day  
of \_\_\_\_\_, \_\_\_\_\_.

EMPLOYEE Signature: \_\_\_\_\_

EMPLOYER Signature: \_\_\_\_\_

## Statement of Employer Payments



Date:		In Reply, Refer to Case No:	
Prime:			
Subcontractor:			
PROJECT NAME:			
PROJECT CONTRACT NO.:		County/location:	

**HEALTH AND WELFARE**

NAME OF PLAN	Address, City and Zip		
ADMINISTRATOR	Address, City and Zip		
CLASSIFICATION(S) USED	CONTRIBUTION PER CLASSIFICATION PER HOUR		
CONTRIBUTIONS:	WEEKLY	MONTHLY	QUARTERLY ANNUALLY

**PENSION**

NAME OF PLAN	Address, City and Zip		
ADMINISTRATOR	Address, City and Zip		
CLASSIFICATION(S) USED	CONTRIBUTION PER CLASSIFICATION PER HOUR		
CONTRIBUTIONS:	WEEKLY	MONTHLY	QUARTERLY ANNUALLY

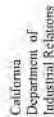
**VACATION/HOLIDAY**

NAME OF PLAN	Address, City and Zip		
ADMINISTRATOR	Address, City and Zip		
CLASSIFICATION(S) USED	CONTRIBUTION PER CLASSIFICATION PER HOUR		
CONTRIBUTIONS:	WEEKLY	MONTHLY	QUARTERLY ANNUALLY

**TRAINING**

NAME OF PLAN	Address, City and Zip		
ADMINISTRATOR	Address, City and Zip		
CLASSIFICATION(S) USED	CONTRIBUTION PER CLASSIFICATION PER HOUR		
CONTRIBUTIONS:	WEEKLY	MONTHLY	QUARTERLY ANNUALLY

IF YOU USE OTHER PLANS NOT LISTED ABOVE, YOU MAY USE THE BACK OF THIS FORM TO PROVIDE THIS ADDITIONAL INFORMATION



Page of

**CERTIFICATION MUST be completed**  
(See reverse side)

**FOOTNOTES** – Any other deductions, contributions and/or payments whether or not included or required by prevailing wage determinations must be separately listed. Use extra sheet(s) if necessary.

S = STRAIGHT TIME  
O = OVERTIME  
SDI = STATE DISABILITY INSURANCE

**NOTICE TO PUBLIC ENTITY****For Privacy Considerations**

**Fold back along dotted line prior to copying for release to general public (private persons).**

(Paper Size then 8-1/2 x 11 inches)

-----

I, \_\_\_\_\_, the undersigned, am the  
(Name – print)

\_\_\_\_\_ with the authority to act for and on behalf of  
(Position in business)

\_\_\_\_\_, certify under penalty of perjury  
(Name of business and/or contractor)

that the records or copies thereof submitted and consisting of \_\_\_\_\_  
(Description, number of pages)

are the originals or true, full, and correct copies of the originals which depict the payroll record(s)  
of the actual disbursements by way of cash, check, or whatever form to the individual or  
individuals named.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

A public entity may require a stricter and/or more extensive form of certification.

Date \_\_\_\_\_

I, \_\_\_\_\_ (Name of Signatory Party) \_\_\_\_\_ (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

\_\_\_\_\_ (Contractor or Subcontractor) \_\_\_\_\_ on the

\_\_\_\_\_ (Building or Work) \_\_\_\_\_; that during the payroll period commencing on the

\_\_\_\_\_ day of \_\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

\_\_\_\_\_ (Contractor or Subcontractor) \_\_\_\_\_ from the full

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract, that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:  
(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ — in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ — Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE

SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OFFICIAL TESTIMONY MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.



**STATEMENT OF NON-PERFORMANCE**

Payroll Number: \_\_\_\_\_

I, \_\_\_\_\_, \_\_\_\_\_ do hereby state that  
(Name of Signatory party) (Title)NO PERSONS employed by \_\_\_\_\_ performed work on  
(Name of submitting company)

the construction project known as \_\_\_\_\_

for the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_,  
(1<sup>st</sup> date of week) (month)and ending on the \_\_\_\_\_ day of \_\_\_\_\_,  
(last date of week) (month)\_\_\_\_\_  
Signature of Authorized Person\_\_\_\_\_  
Date

\*THIS STATEMENT IS NOT REQUIRED TO BE SUBMITTED UNTIL AFTER  
SUBMISSION OF THE INITIAL PAYROLL REPORT

# OWNER-OPERATOR LISTING

Banning- Form 2505

NAME OF CONTRACTOR EMPLOYING OWNER OPERATOR(S)		ADDRESS							
PAYROLL NO.	FOR WEEK ENDING	PROJECT AND LOCATION	CONTRACT NO.						
NAME, ADDRESS, SOCIAL SECURITY NO. AND CONTRACTORS LICENSE NO. OF OWNER-OPERATOR (IF ANY)	WORK CLASSIFICATION	DESCRIPTION OF EQUIPMENT	TRUCK CAL T NO. AND/OR EQUIP. LICENSE NO.	ST OR OT	DAY AND DATE	TOTAL WEEKLY HOURS	HOURLY RATE OF PAY	GROSS PAYMENT EARNED	CHECK NO.
				S					
				O					
				S					
				O					
				S					
				O					
				S					
				O					
				S					
				O					
				S					
				O					
				S					
				O					
				S					
				O					
				S					
				O					
				S					
				O					

NOTE: CERTIFICATION WILL BE ACCEPTED ONLY FROM THE CONTRACTOR EMPLOYING THE OWNER OPERATOR: IT WILL NOT BE ACCEPTED FROM THE OWNER OPERATOR HIM / HERSELF.

## OWNER-OPERATOR LISTING STATEMENT OF COMPLIANCE

Banning- Form 2505

Date \_\_\_\_\_

do hereby state:

(Name of signatory party)

(Title)

(1) That I pay or supervise the payment of the persons reported on this form as Owner-operators by \_\_\_\_\_

(Contractor or subcontractor)

on the \_\_\_\_\_, that during the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_

(Building or work)

\_\_\_\_\_ and ending the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, all persons working on said project have been paid the

full weekly sums earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

\_\_\_\_\_ from the full weekly sums earned by any person and that no deductions have

(Contractor or subcontractor)

have been made either directly or indirectly from the full sums earned by any person, other than permissible deductions, as

described here: \_\_\_\_\_

(2) That any payrolls or listings or otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- ☐ In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll or listings payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- ☐ Each Laborer or mechanic listed in the above referenced payroll or listings has been paid as indicated on the payroll or listings an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below:

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

Remarks: \_\_\_\_\_

NAME AND TITLE

SIGNATURE

On federally-funded projects, permissible deductions are defined in regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c).

Also, the willful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution (see Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code).

**ATTACHMENT “C”**  
SAMPLE AGREEMENT AND  
PAYMENT & PERFORMANCE BONDS

**PROFESSIONAL SERVICES AGREEMENT (C00###)  
FOR [INSERT DESCRIPTION OF SERVICES HERE]**

**By and Between**

**THE CITY OF BANNING**

**and**

**[INSERT COMPANY NAME HERE]**

**AGREEMENT FOR PROFESSIONAL SERVICES (C00####) FOR [INSERT DESCRIPTION OF SERVICES HERE] BY AND BETWEEN CITY OF BANNING AND [INSERT COMPANY NAME HERE]**

THIS AGREEMENT FOR PROFESSIONAL SERVICES (herein "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 by and between the **CITY OF BANNING, a municipal corporation** ("City") and **VENDOR NAME, a California corporation** ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

**RECITALS**

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids (RFP/IFB No. ##-###), the performance of the services for the Insert Type of Work to be Completed prepared in connection therewith, and as further defined and described particularly in Article 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Section 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1. SERVICES OF CONSULTANT**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder and which relate the Insert Type of Work to be Completed prepared in connection therewith. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and



talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

#### 1.2 Consultant's Proposal.

This Agreement shall include the Request for Proposal or Invitation for Bids ("Contract Documents") and the Scope of Service shall include the Consultant's scope of work or in Consultant's accepted bid proposal ("Accepted Bid") shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the Contract Documents, Accepted Bid, and/or Agreement, the terms of this Agreement shall govern.

#### 1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

#### 1.4 Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

#### 1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

#### 1.6 Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

#### 1.7 Further Responsibilities of Parties.

Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonable necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither Party shall be responsible for the service of the other.

#### 1.8 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to five percent (5%) of the Contract Sum or \$25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor.

#### 1.9 Facilities and Equipment.

Except as otherwise provided, Consultant shall, at its own cost and expense, provide all facilities and equipment necessary to perform the services required by this Agreement. City shall make available to Consultant only physical facilities such as desk, filing cabinets, and conference space ("City Facilities"), as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of City. The location, quality, and time of furnishing City Facilities shall be in the sole discretion of City. In no event shall City be required to furnish any facilities that may involve incurring any direct expense, including but not limited to computer, long distance telephone, network data, internet or other communication charges, vehicles and reproduction facilities.

#### 1.10 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

### **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.**

#### 2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed WRITTEN AMOUNT IN DOLLARS (\$0.00) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8.

#### 2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

#### 2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual sub-consultant expenses if an approved sub-consultant pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

#### 2.4 Invoices.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-consultant contracts. Sub-consultant charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City may independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Consultant to be paid within thirty (30) days of receipt of Consultant's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by the City of any invoice provided by the Consultant shall not constitute waiver of any rights or remedies provided herein or any applicable law.

## 2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

# ARTICLE 3. PERFORMANCE SCHEDULE

## 3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

## 3.2 Schedule of Performance.

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions of the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

## 3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.



### 3.4 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, the term of this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) year from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D"). Maximum term and any subsequent amendment or modification shall not exceed five (5) years.

## ARTICLE 4. COORDINATION OF WORK

### 4.1 Representatives and Personnel of Consultant.

The following principals of Consultant (Principals) are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and sub-consultants, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and sub-consultants, if any, assigned to perform the services required under this Agreement, prior to and during any such performance. In the event that City, in its sole discretion, at any time during the term of this Agreement, desire to reassign any staff or sub-consultant of Consultant, Consultant shall, immediately upon reassign notice from City of such desire of City, reassign such person or persons.

### 4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

#### 4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### 4.4 Independent Consultant.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent Consultant of City and shall remain at all times as to City a wholly independent Consultant with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venture or a member of any joint enterprise with Consultant.

#### 4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

### **ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS**

#### 5.1 Insurance Coverages.

Throughout the life of this Agreement, Consultant shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by the City



Manager or his/her designee at any time and in his/her sole discretion. The following policies of insurance are required:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of liability of not less than the following:

\$1,000,000 per occurrence for bodily injury and property damage

\$1,000,000 per occurrence for personal and advertising injury

\$2,000,000 aggregate for products and completed operations

\$2,000,000 general aggregate

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 Any Auto) with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

(iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

(v) PROFESSIONAL LIABILITY Professional Liability (Errors and Omissions) insurance appropriate to Consultant's profession, with limits of liability of \$1,000,000 per claim/occurrence and \$1,000,000 policy aggregate.

In the event Consultant purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

If this Agreement continues for more than three (3) years duration, or in the event the City Manager or his/her designee determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City Manager, or his/her designee.

Consultant shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Consultant shall also be responsible for payment of any self-insured retentions.

Any deductibles or self-insured retentions must be declared to, and approved by, the City Manager or his/her designee. At the option of the City Manager or his/her designee, either: (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to City, its Council members, officers, officials, employees and agents; or (ii) Consultant shall provide a financial guarantee, satisfactory to the City Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the City be responsible for the payment of any deductibles or self-insured retentions.

## 5.2 General Requirements.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Consultant shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Consultant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form. The General Liability (including ongoing and completed operations) and Automobile Liability shall name City and its officers, officials, employees, agents and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Consultant's insurance shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13. The coverage shall contain no special limitations on the scope of protection afforded to the City and its officers, officials, employees, agents and volunteers. The Workers' Compensation insurance policy shall contain a waiver of subrogation as to City and its officers, officials, employees, agents and volunteers. Should Consultant maintain insurance with broader coverage and/or limits of liability greater than those shown above, City requires and shall be entitled to the broader coverage and/or the higher limits of liability maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Consultant.
2. Insurance must be maintained and evidence of insurance must be provided for at least three years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a three-year discovery period.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by Consultant, Consultant must purchase extended reporting coverage for a minimum of three years following the expiration or termination of the Agreement.

4. A copy of the claims reporting requirements must be submitted to City for review.

5. These requirements shall survive expiration or termination of the Agreement.

Consultant shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the City Manager or his/her designee prior to City's execution of the Agreement and before work commences.

If at any time during the life of this Agreement or any extension, Consultant or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to Consultant shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City hereunder shall in any way relieve Consultant of its responsibilities under this Agreement.

Upon request of City, Consultant shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

The fact that insurance is obtained by Consultant shall not be deemed to release or diminish the liability of Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City and its officers, officials, employees, agents and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Consultant, its principals, officers, employees, agents, persons under the supervision of Consultant, vendors, suppliers, invitees, subcontractors, or anyone employed directly or indirectly by any of them.

If Consultant should subcontract all or any portion of the services to be performed under this Agreement, Consultant shall require each subcontractor to provide insurance protection in favor of City and its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Consultant and City prior to the commencement of any work by the subcontractor.

### 5.3 Indemnification, Hold Harmless, and Duty to Defend.

#### A. Indemnities.

1) To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith. Contractor shall agree that their defense and indemnification obligations are in addition to, and are not limited by, the Insurance obligations in the agreement.

2) Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2).

3) Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive



negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Consultant's indemnifications and obligations under this Section, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Consultant's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.

## **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

### **6.1 Records.**

Consultant shall keep, and require sub-consultants to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

### **6.2 Reports.**

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the

estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### 6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Consultant, its employees, sub-consultants and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, revise or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. All sub-consultants shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

### 6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or sub-consultants, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or sub-consultant of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or sub-consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be



present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

### **7.1 California Law.**

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

### **7.2 Disputes; Default.**

In the event that City determines Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

### **7.3 Retention of Funds.**

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any payment amount of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

#### 7.4 Waiver.

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

#### 7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

#### 7.6 Legal Action.

In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant must file a statutory claim pursuant to Government Code Sections 905 et seq. and 910 et seq., in order to pursue a legal action against City under this Agreement.

#### 7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Consultant and its sureties shall be liable for and shall pay to the City the sum of Not Applicable (\$0.00) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Consultant any accrued liquidated damages.

#### 7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Agreement except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Agreement at any time, with or without cause, upon

sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating Party need not provide the non-terminating Party with the opportunity to cure pursuant to Section 7.2.

#### 7.9 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

#### 7.10 Attorneys' Fees.

If either Party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition the Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

### **ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

#### 8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

## 8.2 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or sub-consultant without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement within the scope of Government Code section 1090, nor shall any such officer or employee make, participate in making, or use his or her official position to influence, any City decision relating to the Agreement which has a material financial effect on his or her financial interests or the financial interests of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

## 8.3 Covenant Against Discrimination.

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry, or other protected class.

## 8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

# ARTICLE 9. MISCELLANEOUS PROVISIONS

## 9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either Party desires or is required to give to the other Party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager



and to the attention of the Contract Officer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

#### 9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

#### 9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

#### 9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the Parties. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

#### 9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

#### 9.6 Corporate Authority.

The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

[SIGNATURES ON FOLLOWING PAGE]

SAMPLE



**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF BANNING

CONSULTANT

\_\_\_\_\_  
Douglas Schulze,                      Date  
City Manager

\_\_\_\_\_  
NAME:                      DATE  
TITLE:

\_\_\_\_\_  
NAME:                      DATE  
TITLE:

ATTEST:

\_\_\_\_\_  
Laurie Sampson,                      Date  
Acting Deputy City Clerk

\_\_\_\_\_  
Tax ID No.

APPROVED AS TO FORM:  
Richards, Watson & Gershon

\_\_\_\_\_  
Kevin G. Ennis, Esq.,                      Date  
City Attorney

**Two signatures are required if a corporation**

**NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.**

~~CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT~~

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On \_\_\_\_\_, 20\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

#### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	_____
<input type="checkbox"/>	CORPORATE OFFICER	_____
	TITLE(S)	TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/>	PARTNER(S) <input type="checkbox"/> LIMITED	_____
	<input type="checkbox"/> GENERAL	_____
<input type="checkbox"/>	ATTORNEY-IN-FACT	NUMBER OF PAGES
<input type="checkbox"/>	TRUSTEE(S)	_____
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	DATE OF DOCUMENT
<input type="checkbox"/>	OTHER _____	_____
SIGNER IS REPRESENTING:		
(NAME OF PERSON(S) OR ENTITY(IES))		
_____		
_____		
		SIGNER(S) OTHER THAN NAMED ABOVE

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

- I. Consultant will perform the following services in connection with providing Insert Type of Work to be Completed prepared in connection therewith:**
  - A. Meetings and Presentation
  - B. Plans, Specifications, and Estimates (PS&E)
  - C. Cost Estimate
  - D. Final Plans and Specifications
  - E. Bidding Phase Assistance
  - F. Construction Phase Assistance
  - G. Federal/State Documentation Assistance
  - H. Traffic Circle Plans
- II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:**
  - A. Critical Path Project Schedule
  - B. Preliminary Project Notice (1<sup>st</sup> Notice)
  - C. Prepare to Relocate Notice with Response Form (2<sup>nd</sup> Notice)
  - D. Notice to Relocate (3<sup>rd</sup> Notice)
  - E. Sidewalk, ADA Ramps, Driveway, and Curb & Gutter Improvement Plans
  - F. Bike Lane and Crosswalk Plans (Signing & Striping Plans)
  - G. Right of Entry and Exhibits Documents
  - H. Bid Sheet, Special Provisions, and Cost Estimates
  - I. One Set of Final Plans in Mylar
  - J. Five (5) Sets of Bond Copies of the Final Plans and Specifications After Engineer's Signatures
  - K. Electronic Copy (PDF) of Approved Plans for Bidding Purposes

- L. AutoCAD Files of the Final Plans (2014 Version)
- III. In addition to the requirements of Parts I and II of this Scope of Services, during the performance of the services, Consultant will keep the City apprised through periodic status reports regarding the performance of the services under this Agreement by the following means:
  - A. In-person meetings.
  - B. Email updates/questions to applicant team and City while reviews are underway.
  - C. Conference calls.
- IV. All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.
- V. Consultant will utilize the following personnel to accomplish the services:
  - A. Dilesh Sheth, Program Manager
  - B. Lin McCaffrey, Senior Engineer
  - C. Nick Lowe, Associate Engineer
  - D. Michael Johnson, Director
  - E. Nick Keller, Senior Designer

**EXHIBIT "B"**  
**SPECIAL REQUIREMENTS**  
**(Superseding Contract Boilerplate)**

**None**

**EXHIBIT "C"**  
**SCHEDULE OF COMPENSATION**

**I. Consultant shall perform the following tasks ("Tasks") at the following rates**

<b>TASK</b>	<b>DESCRIPTION</b>	<b>SUB-BUDGET</b>
1.	Meetings and Presentations	\$9,012.00
2.	Plans, Specifications and Estimates (PS&E)	\$87,728.00
3.	Final Plans and Specifications	\$3,996.00
4.	Bidding Phase Assistance	\$3,720.00
5.	Construction Phase Assistance	\$5,440.00
6.	Federal/State Documentation Assistance	\$8,768.00
7.	Traffic Circle Plans	\$9,032.00
	<b>TOTAL</b>	<b>\$127,696.00</b>

**II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.**

**III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub-budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.**

**IV. The City will compensate Consultant for the services performed upon submission of a valid invoice. Each invoice is to include:**

- A.** Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B.** Line items for all materials and equipment properly charged to the services.
- C.** Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D.** Line items for all approved sub-consultant labor, supplies, equipment, materials, and travel properly charged to the services.



- V. The total compensation for services shall not exceed \$127,696.00 as provided in Section 2.1 of this Agreement.
- VI. The Consultant's billing rates for all personnel are attached as Exhibit C-1.

EXHIBIT "C-1"  
CONSULTANT'S BILLING RATE AND TASK SCHEDULE

SAMPLE

**EXHIBIT "D"**  
**SCHEDULE OF PERFORMANCE**

- I. Consultant shall perform all services timely in accordance with the schedule to be developed by Consultant and subject to the written approval of the Contract Officer. Consultant will provide a written proposal within one week of the City's request for services, unless otherwise agreed to by the Contract Officer.**
- II. Consultant shall deliver the following tangible work products to the City by the following dates.**
  - A. Proposed Project Schedule – Attached as Exhibit D-1.**
- III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

EXHIBIT “D-1”  
PROPOSED PROJECT SCHEDULE

SAMPLE

PAYMENT BOND  
(CALIFORNIA PUBLIC WORK)

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the City of Banning (referred to hereinafter as "Obligee") has awarded to \_\_\_\_\_ (hereinafter designated as the "Contractor") a contract dated \_\_\_\_\_, for work described as follows:

**PROJECT NO. ATPL-5214 (012), "ATP CYCLE 2 – BICYCLE AND SAFE ROUTES TO SCHOOL IMPROVEMENTS"** (hereinafter referred to as the "Public Work Contract"); and

WHEREAS said Contractor is required to furnish a bond in connection with said Public Work Contract, and pursuant to Section 3247 of the California Civil Code;

NOW, THEREFORE, we \_\_\_\_\_, the undersigned Contractor, as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the CITY OF BANNING and to any and all persons, companies or corporation entitled to file stop notices under Section 3181 of the California Civil Code in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), said sum being not less than 100 percent of the total amount payable by the said obligee under the terms of the said Public Work Contract, for which payment will and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if said Contractor, his or its heirs, executors, administrators, successors or assigns, or Subcontractors, shall fail to pay for any materials, provisions, vendor or other supplies or teams, implements or machinery used in, upon, for or about the performance of the Public Work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of said Contractor and his Subcontractors pursuant to Section 18806 of the Revenue and Taxation Code with respect to such work and labor as required by the provisions of Section 3247 through 3252 of the Civil Code, the Surety or Sureties hereon will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, the said Surety or Sureties will pay a reasonable attorney's fee to be fixed by the Court. In addition to the provisions herein above, it is agreed that this bond will inure to the benefit of any and all persons, companies and corporations entitled to serve stop notices under Section 3181 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the said Public Work Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications,

No final settlement between the Obligee and the Contractor hereunder shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

PRINCIPAL: \_\_\_\_\_

By: \_\_\_\_\_

SURETY: \_\_\_\_\_

By: \_\_\_\_\_  
Attorney-in-fact

IMPORTANT: Surety companies executing Bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in Section 105 of the California Insurance Code.



**CALIFORNIA  
ALL PURPOSE ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA                     )  
   )       S.S.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, personally appeared \_\_\_\_\_ personally known to me; or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that (he/she/they) executed the same in his/her/their/ authorized capacity(ies), and that the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

\*\*\*\*\*

**CAPACITY CLAIMED BY SIGNER:**

Though statute does not require the notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

\_\_\_\_ Individual (s)  
\_\_\_\_ Corporate Officer (s) \_\_\_\_\_ and \_\_\_\_\_  
   Titles: \_\_\_\_\_ and \_\_\_\_\_  
\_\_\_\_ Partner(s) \_\_\_\_\_ Limited \_\_\_\_\_ General  
\_\_\_\_ Attorney-in-fact  
\_\_\_\_ Trustee (s)  
\_\_\_\_ Guardian/Conservator  
\_\_\_\_ Other: \_\_\_\_\_

\_\_\_\_\_  
Signer is representing: \_\_\_\_\_

\*\*\*\*\*

**ATTENTION NOTARY:** Although the information requested below is optional, it could prevent fraudulent attachment of this certificate to an unauthorized document.

Title of type of document: \_\_\_\_\_

Number of pages: \_\_\_\_\_

Date of document: \_\_\_\_\_

Signer(s) other than named above: \_\_\_\_\_

**This Certificate must be attached to the document described above**

CONTRACT PERFORMANCE BOND  
(CALIFORNIA PUBLIC WORK)

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the \_\_\_\_\_ (referred to hereinafter as "Obligee") has awarded to \_\_\_\_\_ hereinafter designated as the "Contractor") a contract dated \_\_\_\_\_, for work described as follows:

**PROJECT NO. ATPL-5214 (012), "ATP CYCLE 2 – BICYCLE AND SAFE ROUTES TO SCHOOL IMPROVEMENTS"** (hereinafter referred to as the "Public Work Contract"); and

WHEREAS, the Contractor is required by said Public Work Contract to perform the terms thereof and to provide a bond both for the performance and guaranty thereof.

NOW, THEREFORE, we \_\_\_\_\_, the undersigned Contractor, as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the CITY OF BANNING in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), said sum being not less than 100 percent of the total amount payable by the said obligee under the terms of the said Public Work Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the bounden Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the said Public Work Contract and any alteration thereof made as therein provided, on his or its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill the one-year guarantee of all materials and workmanship; and indemnify and save harmless the Oblige, its officers and agents, as stipulated in said Public Work Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect. In case suit is brought upon this bond, the said Surety will pay to oblige a reasonable attorney's fee to be fixed by the Court.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the said Public Work Contract or to the work to be performed there under or the Specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

No final settlement between the Obligee and the Contractor hereunder shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

PRINCIPAL:

\_\_\_\_\_

By \_\_\_\_\_

SURETY:

\_\_\_\_\_

By \_\_\_\_\_

Attorney-in-fact

The rate of premium on this bond is \_\_\_\_\_ per thousand.

The total amount of premium charged, \$ \_\_\_\_\_. (The above must be filled in by corporate surety.)

IMPORTANT: Surety companies executing Bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in Section 105 of the California Insurance Code.

**CALIFORNIA  
ALL PURPOSE ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA                     )  
  )  
COUNTY OF \_\_\_\_\_ )           S.S.

On \_\_\_\_\_ before me, personally appeared \_\_\_\_\_ personally known to me; or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that (he/she/they) executed the same in his/her/their/ authorized capacity(ies), and that the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

\*\*\*\*\*

**CAPACITY CLAIMED BY SIGNER:**

Though statute does not require the notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

\_\_\_\_ Individual (s)  
\_\_\_\_ Corporate Officer (s) \_\_\_\_\_ and \_\_\_\_\_  
  Titles: \_\_\_\_\_ and \_\_\_\_\_  
\_\_\_\_ Partner(s) \_\_\_\_\_ Limited \_\_\_\_\_ General  
\_\_\_\_ Attorney-in-fact  
\_\_\_\_ Trustee (s)  
\_\_\_\_ Guardian/Conservator  
\_\_\_\_ Other: \_\_\_\_\_

Signer is representing: \_\_\_\_\_

\*\*\*\*\*

**ATTENTION NOTARY:** Although the information requested below is optional, it could prevent fraudulent attachment of this certificate to an unauthorized document.

Title of type of document: \_\_\_\_\_

Number of pages: \_\_\_\_\_

Date of document: \_\_\_\_\_

Signer(s) other than named above: \_\_\_\_\_

**This Certificate must be attached to the document described above**

# **ATTACHMENT 4**

*(Artistic Maintenance, Inc. Proposal dated May 7, 2019)*

#### IV. FACILITIES DESCRIPTION

Landscape Maintenance District No. 1 (the "District") currently consists of 16 accepted tracts: Tract Nos. 21882, 22810, 22811, 22913, 23446 (including the median on Highland Home Road), 23598 (includes frontage of several homes along Moonbeam Drive), 28252, 29721, 30186, 30222 (including Richard Sanchez Park), 30793, 31833, 31834, 31835, 32109, and 30906 (portion of this tract that has been accepted by the City). This includes the maintenance of existing and proposed public landscaping and storm drain facilities (including detention/retention basins) installed and constructed within the public places. For the specific locations, the location map for the tract sites is enclosed as Appendix "A". The purpose of Landscape Maintenance District No. 1 is for the maintenance and servicing of landscape medians and parkways, perimeter strips and backup walls, landscaped hillsides with high visibility, side slopes adjacent to sidewalks, flood detention or retention basins, and the irrigation of the above facilities.

When additional tracts, or portions thereof, are accepted by the City of Banning and become part of Landscape Maintenance District No. 1, the City and Contractor shall negotiate a fair and reasonable price (based on labor costs, needed planting materials, square footage of area, current costs, etc.) to compensate the Contractor for the newly assigned work. **Note: The City shall decide if any of the abovementioned tracts will be maintained by Public Works Department staff. If City staff maintains a particular tract or any portion thereof, the bid amount for that tract or area (if a portion, the price will be negotiated) will be deducted from the contract award amount. Thus, the scope of services could be reduced by the City at any time during the life of the contract. The City reserves the right to not award any initial contract at all. If a Tract is being rehabilitated or reconstructed and thus the irrigation and plant material are being removed and newly installed, the landscape maintenance of this Tract will be temporarily removed from the Scope of Work and no compensation shall be made on that Tract or portion thereof until the City Engineer notifies the Contractor to resume its' maintenance.**

#### V. SCOPE OF WORK

- A. The intent of this Contract Agreement is to secure a Contractor, which shall provide COMPLETE LANDSCAPE MAINTENANCE SERVICES for Landscape Maintenance District No. 1 for a period of approximately twelve months with a possible option to renew for up to four single additional years.



- B. The Contractor shall furnish all labor, tools, materials, and equipment to provide landscape maintenance services as set forth in these specifications.
  - C. All work shall be done in a thorough and workmanlike manner to the satisfaction of the City Engineer, or his authorized agent, and comply with legal landscape maintenance practices. All work shall not be considered complete until verified by the City Engineer or his authorized agent. The premises shall be maintained at the level of service provided for in these specifications at all times.
  - D. The Contractor shall have the duty to provide weekly complete landscape maintenance of all work sites listed in Section IV, and any others added in the future. When additional tracts, or portions thereof, are accepted by the City and become part of Landscape Maintenance District No. 1, the City and Contractor shall negotiate a fair and reasonable cost to compensate the Contractor for the newly assigned work.
  - E. The Contractor shall be available twenty-four (24) hours a day, seven (7) days a week to respond to all emergencies within two (2) hours of notification.
  - F. The Contractor shall perform a weekly maintenance inspection, during daylight hours, of all areas. Such inspection shall be both visual and operational. It shall include, but not be limited to, the operation of all irrigation systems, and checking maintenance, repairs, and replacement of existing landscaped areas, which are maintained under this contract. Any improvement on the project site shall be approved by City prior to commencement of improvement, for which City will respond or give approval within a reasonable time, unless it is in an emergency situation. The Contractor shall provide all proper documentation for all purchases which shall be presented to City as soon as possible. All expenditures will be recorded and reimbursed by City on a quarterly basis.
1. The Contractor is to provide each of the items listed below:
    - a. Organizational data.
    - b. Organizational chart including all executives.
    - c. The name of the foreman or supervisor assigned to supervise the work of this contract.
    - d. Current number of employees of the company.
    - e. Brief description of company personnel and training procedures.
  2. **Quality Control** - The Contractor shall prepare and provide an Inspection/Checklist Form for each Tract area as approved by the Public Works Director/City Engineer or his designee. The Contractor's personnel will use this form to reflect services performed and any exceptions to the requirements. Additionally, both the Contractor's Supervisor and Public Works Director/City Engineer or his designee

evaluating the effectiveness and adequacy of services performed, will use this form. This form will be completed weekly and be kept by the Public Works Director in an appropriate binder. A copy of the inspection/checklist will be forwarded to the Public Works Director/City Engineer and/or his designee on a weekly basis.

Contractor shall submit detailed description of all hiring, training, testing, and disciplinary policies and procedures used by this firm, prior to the contract award.

## **VI. COMPENSATION**

### **E. BASIC COMPENSATION**

OWNER shall pay CONTRACTOR, as compensation for the services to be performed, the sum of per month listed in the Contract Agreement with additional adjustments as specified thereafter. Additional adjustments (additions or deletions) shall be made to the monthly compensation if/as new areas are included in the City of Banning, Landscape Maintenance District No. 1, or if individual tracts/areas will instead be maintained by Public Works Department staff.

Compensation shall be adjusted annually, on July 1 of each year commencing on July 1, 2020, during the term of the Contract Agreement to reflect annual changes in the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index (CPI) Riverside-San Bernardino-Ontario area, or any successor index, as set forth for the previous calendar year (January 1 through December 31) prior to the date of adjustment. The City Council must approve such adjustment at the time the contract is renewed.

## **VII. SCOPE OF SERVICES**

**JULY 1, 2019 THROUGH JUNE 30, 2020, MAXIMUM UP TO JUNE 30, 2024**

### **LANDSCAPE MAINTENANCE DISTRICT NO. 1**

- The Scope of Services shall include, but not be limited to:
  1. Irrigation Program, Conservation, Maintenance, and Repair
  2. Disease and Pest Control
  3. Weed Control

4. TurfGrass Mowing, Edging, Trimming, Aerating, Overseeding, Replanting and Fertilizing
5. Ground Cover Edging, Trimming, Thinning, Pruning, Replanting, and Fertilization
6. Cultivation
7. Shrub Thinning, Pruning, and Fertilization
8. Tree Trimming, Pruning, Sucker Removal, Staking and Tying, and Fertilization
9. Curb and Gutter Maintenance
10. Walkway Maintenance
11. Drain Maintenance
12. Removal of Leaves
13. Litter Removal
14. Natural Area Maintenance

#### **VIII. ADDITIONAL WORK**

- A. The City Engineer may authorize the Contractor to perform additional work. Additional work shall be defined as work not included in these specifications with the exception of additional tracts, or portions thereof, which may be added.
- F. Prior to the Contractor performing any additional work, the Contractor shall prepare and submit a written description of the work with an estimate of labor and materials cost. No work shall commence without written authorization from the City Engineer, or his designee. In the event that conditions exist where there is imminent danger of injury to the public or damage to property, the City Engineer may verbally authorize the work to be performed upon receiving a verbal estimate from the Contractor. Within twenty-four (24) hours after receiving verbal authorization, the Contractor shall submit a written estimate to the City Engineer for written approval.
- C. The cost estimate for additional work shall consist of the following elements:
  1. Wholesale cost of materials including sales tax plus ten percent (10%).
  2. Base cost of labor plus fifteen percent (15%) for overhead and profit.
- D. Written authorization for additional work from the City Engineer, or his designee,

shall be by the issuance of a Change Order. This Change Order shall be considered an amendment to the Contract Agreement and approved by both the City Engineer and Contractor.

- E. All additional work shall commence on the specified date established and shall diligently proceed until completion.
- F. Upon completion of the additional work, the City Engineer or his designee shall be notified so that the work may be verified.
- G. The Contractor shall submit an invoice for compensation with attached photocopies of original invoices for materials. Compensation shall not exceed the written estimate. The contractor's invoice shall be subject to audit and review by the City prior to payment.
- H. The City of Banning reserves the right to repair and/or contract with a third party to perform such additional work.

#### **IX. TERM, DURATION AND RENEWAL OF CONTRACT AGREEMENT**

- A. Except as otherwise provided herein, services under this Contract Agreement shall commence on or about July 1, 2019, and terminate no later than June 30, 2024. A renewal of the Contract Agreement shall occur each year ending June 30, for the contract price submitted, subject to the terms of Section VI and only if additional single years are approved by the City.
- B. Subject to the provision for Contract Termination as set forth in Section XLVI thereof, the Contract Agreement shall be for a maximum period of up to 60 months unless the City of Banning first gives written notice to the other at least thirty (30) days and the Contractor gives written notice ninety (90) days, prior to the termination date of the intent to renew the Contract Agreement.

#### **X. CONTRACTOR LIABILITY**

- A. **All damage to existing improvements (turf, shrubs, trees, curb, gutter, sidewalk, sprinkler systems, etc.) located within areas, and adjacent to areas under maintenance, which in the opinion of the City Engineer are due to the Contractor's operation, shall be repaired or replaced at the Contractor's expense with similar materials and in an approved manner.**
- B. Such repairs and/or replacement shall be performed by the Contractor at no cost to the City, and shall be accomplished as directed by the City Engineer or his representative. Repairs shall be made immediately after damage or alteration occurs. Deductions shall be made from the Contractor's payment in the amount necessary to compensate the City for such repairs in the event such repair work is

done by City forces or another source or is found to be unsatisfactory as stated in Section XLIII.

- C. Irrigation damage shall be repaired or replaced within the following time limits:
  - 1. Mainline irrigation breaks shall be repaired within two (2) hours.
  - 2. All other irrigation repair and/or replacement shall be completed within one (1) working day.
- D. All damages to turf, ground cover, shrubs or trees shall be repaired or replaced by the Contractor within five (5) working days at no cost to the City.
  - 1. Damage to turf shall be repaired by replacement with the appropriate variety of sod; reseeding shall not be considered as an adequate repair.
  - 2. Damage to ground cover shall be repaired by replacement with the appropriate variety of plant material. Size and spacing shall be determined by the City Engineer.
  - 3. Damage to shrubs may be corrected by appropriate pruning; however, if in the opinion of the City Engineer the damage is severe, the shrub shall be removed and replaced with a similar variety and size.
  - 4. Damage to trees shall be repaired in the following manner:
    - a. Minor damage such as bark lost from mechanical equipment shall be remedied by a qualified Tree Surgeon or Arborist.
    - b. If the damage results in the loss of the tree, or a recommendation of removal, the damaged tree shall be removed and replaced with a similar variety and size.
- E. All damage resulting from chemical application and/or operation, either by spray-drift, improper application, lateral leaching, or other means, shall be corrected in accordance with the previous provisions and the soil conditioned to ensure its ability to support plant life.

## **XI. INSPECTION**

The City shall inspect the work area to insure adequacy of maintenance and methods of performing the work are in compliance with the contract. However, this shall not be construed to relieve the Contractor of any duty under this contract. Discrepancies and deficiencies in the work shall be brought to the attention of the Contractor and corrected in the manner agreed to by the City Engineer.

**Once the Contract has been awarded, the Contractor shall inspect the LMD No.1 for missing plants, ground cover, shrubs, irrigation materials, etc. and provide such**



inventory list along with a cost estimate for installation of each item, to the City Engineer for approval. Such inventory list will then be due by April 1<sup>st</sup> of each year beginning on April 1, 2020 after the initial punch list is made for the newly awarded contract.

- A. It shall be the Contractor's responsibility to inspect, and identify, any condition(s) that renders any areas within this Contract Agreement unsafe, as well as any unsafe practices occurring thereon. The City Engineer shall be notified immediately of any unsafe condition that requires correction.
- B. The Contractor shall be responsible for making minor corrections including, but not limited to filling holes in landscaped areas and paving, using barricades or traffic cones to alert persons of the existence of hazards, and replacing valve box covers.
- C. The Contractor shall inspect all work sites for hazards, or potential hazards on a daily basis.
- D. During the required inspection of all work sites for hazards, or potential hazards, the Contractor shall keep a log indicating the date the area was inspected, any unsafe conditions found, and the action taken.
- E. The Contractor shall cooperate fully with the City of Banning in the investigation of any accidental injury or death occurring on the premises, including the submission of a complete written report thereof to the City Engineer within five (5) days following the occurrence.

## **XII. SAFETY**

- A. The Contractor shall perform all work outlined in these specifications in such a manner as to provide maximum safety to the public, and meet all accepted standards for safe practices during the maintenance operation, to safely maintain equipment, machines and materials or other hazards consequential or related to the work. The contractor shall have sole responsibility for complying with all local, County, State or other legal requirements including, but not limited to CAL-OSHA.
- B. The City Engineer or his designee, reserves the right to issue restraint, or cease and desist orders, to the Contractor when unsafe or harmful acts are observed or reported relative to the performance of work under this contract.
- C. The Contractor shall so conduct its operation as to cause the least possible obstruction and inconvenience to public traffic. The Contractor shall furnish, erect and maintain such fences, barriers, lights and warning signs as deemed necessary



by the City Engineer or his designee.

- D. The Contractor must abide by the provisions of the **“WORK AREA TRAFFIC CONTROL HANDBOOK” (WATCH)** published by Building News, Inc., 3055 Overland Avenue, Los Angeles, CA 90034 (213) 202-7775.
- E. High Level Warning Devices provide advance warning of a work area by being visible to a driver even when the work area is obstructed from view by vehicles or construction equipment.
1. High level warning devices shall be used where indicated by the City Engineer, such as, at street approaches to locations where construction or maintenance work is being performed within or immediately adjacent to a traffic lane.
  2. High level warning devices shall be at least 9 feet high with legs base, or truck mounting designed to resist overturning in brisk winds. Sandbags may be used to add weight to the base or legs. High Level Warning devices shall be equipped with a yoke at the top to accommodate at least three flags. Flags shall be fabricated of high visibility orange material and equipped with stays to keep flags extended. Torn or dirty flags shall be immediately replaced.
  3. The warning signs are intended to be permanently mounted to the High Level Warning Device. These signs must be approved by the proper authorizing agency. When required, all signs must be provided, installed and maintained by the Contractor. No signs or supports shall bear any commercial advertising. These warning signs shall be high visibility orange material with black lettering.
  4. Signs shall be installed immediately before work is to commence and must be removed immediately after work is complete.
  5. The location of the signs will depend upon alignment, grade, location of street intersections, and posted speed limit. Signs shall face and be visible to oncoming traffic and be mounted so as to resist displacement. The center of the warning sign shall be at least 4 1/2 feet above the roadway. The Advance Warning signs shall be located on the right hand side of traffic lanes. Minimum Sign Placement From Work Area are listed as follows:

**Traffic Speed Advancement Warning Sign Placement**

25 MPH	150	FT.
30 MPH	200	FT.
35 MPH	250	FT.
40 MPH	350	FT.
45 MPH	550 FT.	

**XIII. REMOVING OBSTRUCTIONS AND MAINTENANCE OF EXISTING IMPROVEMENTS**

- A. When the work hereunder involves performance upon City property, and when the proper completion of the said work requires the temporary or permanent removal of Improvements, the Contractor shall, at his own expense, remove, and without unreasonable delay temporarily or permanently replace or relocate to the satisfaction of the City and of any other person or agency having jurisdiction, all water pipes, drainage lines, irrigation lines, conduits, culverts, driveways, fences, wires, poles, retaining walls, curbs, gutters, concrete walks, trees, shrubs, lawns and all other improvements. All such improvements temporarily removed shall be maintained until permanently replaced, all at the Contractor's expense.
- B. Where the work is to be constructed in, or adjacent to, areas which have been improved by lawns, trees, shrubs, or gardens, the Contractor shall remove such trees or plants as may be necessary for the prosecution of the work and give them proper care and attention until the work has been satisfactorily completed, after which the Contractor shall replace them in as nearly the original condition and location as is reasonably possible. Where it is necessary to deposit the excavated materials on the lawns during the process of construction, the Contractor shall first lay burlap or canvas on the lawn to prevent contact between the excavated material and the lawn.
- C. Unless otherwise indicated in the contract documents all utility lines, conduits, wires, or structures shall be maintained by the Contractor and shall not be disturbed, disconnected, or damaged by him during the progress of the work, provided, that should the contractor in the performance of the work disturb, disconnect, or damage any of the above, all expense arising from such disturbance, or in the replacement or repair thereof, shall be borne by the Contractor. However, in accordance with Section 4215 of the California Government Code, the Contractor shall be compensated for the cost of locating and repairing damage to main or trunkline utility facilities located on the job site, not due to the failure of the Contractor to exercise reasonable care; for costs of removing or relocating such utility facilities not indicated in the contract documents with reasonable accuracy; and for the operation cost for equipment on the project necessarily idled such work.
- D. At least two working days prior to commencing any excavation pursuant to this Contract, the Contractor shall contact Underground Service Alert or other appropriate regional notification center if the excavation will be conducted in an area which is known, or reasonably should be known, to contain subsurface

installations.

#### **XIV. WORK SCHEDULE**

- A. The Contractor shall accomplish all normal landscape maintenance required under this contract **between the hours of 7:00 AM and 6:00 PM, Monday through Saturday**. The City Engineer may grant, on an individual basis, permission to perform contract maintenance during other hours. **No maintenance functions that generate excess noise, which would cause annoyance to residents, shall commence before 8:00 AM. The Contractor shall establish a schedule of routine work to be followed in the performance of this contract, and submit such schedule to the City Engineer.**
- B. Within ten (10) days after the start of the maintenance contract, the Contractor shall submit to the City Engineer weekly detailed job schedule, names and titles of all persons working on the project. Materials and/or chemicals to be used on any site shall be approved by the City Engineer or his representative. The City Engineer shall be notified within five (5) working days of any deviation from this schedule or material usage.
- C. **The Contractor shall maintain and keep current a report form that records all on-going, seasonal and additional work maintenance functions performed on a daily basis by the Contractor's personnel. Said report shall be in a form and content acceptable to the City Engineer and shall be submitted to the City Engineer monthly. The monthly payment will not be made until such report is received by the City Engineer.**

#### **XV. CONTRACTOR STAFF**

- A. The Contractor shall furnish sufficient supervisory and working personnel capable of promptly accomplishing high quality and on schedule work required under this contract during the prescribed hours.
- B. The Contractor shall have competent supervisors, who may be working supervisors, on the job at all times. Work that is being performed must be by those who are capable to communicate effectively both in written and oral English, and discuss matters pertaining to this contract. Supervisors must be able to demonstrate to the satisfaction of the City Engineer that they possess adequate technical background. Any order or communication given to the supervisor shall be deemed as delivered to the Contractor.
- C. The Contractor, and his employees, shall conduct themselves in a proper and efficient manner at all times and shall cause the least possible annoyance to the public. The City Engineer may require the Contractor to remove from the work

site any employee(s) deemed careless, incompetent, or otherwise objectionable, whose continued employment on the job is considered to be contrary to the best interest of the City of Banning.

- D. The Contractor shall require each of his employees to wear basic public works working attire. This includes proper shoes, and other gear required by the State Safety Regulation, and proper wearing of the clothing. Shirts shall be worn and buttoned at all times; safety vests are required when indicated by the Work Area Traffic Control Handbook.

#### **XVI. STORAGE FACILITIES**

The City of Banning shall not provide any storage facilities for the Contractor.

#### **XVII. SIGNS**

- A. The Contractor shall not post signs or advertising matter upon the areas under maintenance unless prior written approval is obtained from the City Engineer.
- B. The Contractor shall, at all times, remove all unauthorized signs and advertising matter in the area under maintenance.

#### **XVIII. LOCKS AND KEYS**

- A. Where City of Banning locks and keys are required as part of this contract, the Contractor shall:
  - 1. Not duplicate any coded City key furnished by the City for access and operation of the controller.
  - 2. Surrender all keys furnished by the City promptly at the end of the contract period, or at any time deemed necessary by the City Engineer to prevent loss to the City of Banning.
  - 3. Protect the security of City property by keeping controller cabinet and enclosure doors locked at all times.
  - 4. Refrain from using premises behind locked doors for storage of materials, supplies or tools except as approved by the City Engineer.

#### **XIX. UTILITIES**

- A. The City of Banning shall pay for maintenance related water and electrical utilities.
- B. Water usage shall not exceed the amount required to comply with irrigation

schedules established by the Contractor and approved by the City Engineer.

- C. The Contractor may be required to pay for excessive utility usage due to the Contractor's failure to monitor irrigation system malfunctions or unauthorized increases in water usage.
- D. The excess cost will be determined by comparing the current usage with historical usage for the same time period.
- E. The excess cost factor may be deducted from payments to the Contractor; however, the Contractor will be allowed to explain the increase in utility usage prior to the determination that a deduction is warranted.

## **XX. NON-INTERFERENCE**

The Contractor shall not interfere with the public use of the premises, and shall conduct their operations so as to offer the least possible obstruction and inconvenience to the public, nor disrupt the peace and quiet of the area within which the services are performed.

## **XXI. PARKING**

The Contractor's vehicles and equipment shall not be parked or set in such a manner that they block pedestrian access or vehicular right-of-way except as required to comply with all safety standards of CAL-OSHA.

## **XXII. USE OF CHEMICALS**

- A. The Contractor shall submit a list of all chemical herbicides, pesticides and rodenticides proposed for use under this contract for approval by the City Engineer upon award of the contract. Materials used shall be limited to chemicals approved by the State of California Department of Food and Agriculture. The list shall include the exact brand name and generic formulation. The use of a chemical on the list shall be based on the recommendations of a licensed pest control advisor. The Contractor shall provide a list of pesticide applicator personnel and a copy of their Qualified Applicator license, issued by the Dept. of Pesticide Regulation Licensing to the City each year of the Contract.
- B. A certified pesticide applicator's license is required if such chemicals will be used. Submit the license to the City prior to the Contract start date.
- C. The use of chemicals shall conform to the current County of Riverside Agriculture Commissioner regulations.



- D. **No chemical herbicide, rodenticide, or pesticide shall be applied until its use is approved, in writing, by the City Engineer as appropriate for the purpose as proposed.**

### **XXIII. DISEASE AND PEST CONTROL**

- A. The Contractor shall regularly inspect all landscaped areas for the presence of disease, snail, insect or rodent infestation. The Contractor shall advise the City Engineer within five (5) days when any disease, snail, insect or rodent infestation is found; he shall identify the disease, snail, insect or rodent and specify control measures to be taken. Upon written approval of the City Engineer, the contractor shall implement the approved control measures, exercising extreme caution in the application of all spray materials, dusts or other materials utilized.
- B. Approved control measures shall be continued until the disease, snail, insect or rodent is controlled. The Contractor shall utilize all safeguards necessary during disease, snail, and insect or rodent control operations to ensure safety of the public and the employees of the Contractor.
- C. The Contractor shall perform at his sole expense the following services:
  1. All work involving the use of chemicals will be accomplished by a State of California licensed pest control operator. A written recommendation by a person possessing a valid California Pest Control Advisor License is required prior to chemical application.
  2. **All chemicals requiring a special permit for use must be registered by the Contractor with the County Agricultural Commissioner's Office and a permit obtained with a copy to the City Engineer prior to use. Pesticide application employees are trained and certified under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) requirements and the California Food and Agriculture Code. A copy of this license shall be given to the City Engineer to comply with the City's NPDES Permit.**
  3. **A copy of all forms submitted to the County Agricultural Commissioner shall be given to the City Engineer on a monthly basis.**
  4. All regulations and safety precautions listed in the "Pesticide Information and Safety Manual" published by the University of California will be adhered to.

### **XXIV. WEED AND TRASH CONTROL**

- A. For the purpose of these specifications, a weed will be considered as "any



undesirable or misplaced plant.” Trash shall be considered litter, garbage or debris should as discarded food or items, plastic straws or bags, etc.

- B. All areas within the specified maintenance area, including but not limited to, turf grass, shrub and ground cover areas, banks, planters, and hardscape areas shall be kept free of weeds and trash at all times.
- C. Weed removal shall consist of complete removal of all weeds, including top growth and roots, as the weeds appear.
- D. Weed and trash control shall be performed a minimum of one (1) time per week. If trash or debris is excessive, the City may ask for more frequent clean up and removal with no additional compensation allowed.
- E. Bare areas between plants shall be cultivated by hand on a weekly basis.
- F. Weeds shall be controlled either by hand, mechanical or chemical methods; however, the City Engineer may restrict the use of chemical weed control in certain areas. Trash shall be removed by hand.

#### **XXV. METHOD OF IRRIGATION**

- A. Irrigation shall be done by the use of automatic or manual sprinkler systems where available and operable.
- B. All areas receiving marginal coverage shall be irrigated by a portable irrigation method. The Contractor shall furnish all hoses, nozzles, sprinklers, etc., necessary to accomplish this supplemental irrigation. Care shall be exercised to prevent a waste of water, erosion, and/or detrimental seepage into existing underground improvements or structures.

#### **XXVI. INITIAL IRRIGATION INSPECTION**

- A. The Contractor shall initially inspect and familiarize himself with the entire irrigation system at all work sites and identify all needed repairs.
- B. **Required repairs and associated costs (cost estimate) shall be submitted to the City Engineer in a written statement within two (2) weeks after the start date of the Landscape Services Contract. If a written statement documenting the required repairs is not received by the City Engineer within the stated time frame, the entire system shall be interpreted as being fully operational.**
- C. The City shall review and verify all submitted repairs. Repairs may be completed by the following methods:

1. Authorize the Contractor to make appropriate repairs at the expense of the City as described in Section IV.
  2. Use City forces to make required repairs.
  3. Use another source to make required repairs.
- D. Upon completion of such repairs the Contractor shall sign-off each area as being fully operational.

## **XXVII. IRRIGATION INSPECTIONS, MAINTENANCE AND REPAIRS**

- A. **The Contractor shall file a monthly statement with the City Engineer reporting all system malfunctions, damage and obstructions, noting when corrective action was taken and certifying that all irrigation systems are functioning properly.**
- B. The Contractor shall inspect the operation of the irrigation system weekly for any malfunctions. In addition to regular testing, all irrigation systems shall be tested and inspected as necessary when damage is suspected, observed or reported.
- C. The Contractor shall maintain all irrigation systems, at no additional cost to the City, in such a way as to:
1. Guarantee proper coverage and full working capability.
  2. Make whatever adjustments may be necessary to prevent overspray or excessive runoff into street right-of-ways or other areas not meant to be irrigated. Water conservation measures will be complied with.
- D. The Contractor shall repair or replace inoperable irrigation equipment to maintain a fully operational system, including but not limited to, pressure pipes from the water meter to the control valves, all irrigation pipes, all manual and automatic valves, backflow devices, filters, strainers, pressure regulators, sprinkler heads, irrigation clamps and stakes, anti-drain valves, quick couplers, electrical wiring from the controller to the solenoid valves, emitters, drippers, valve boxes, controllers, valve markers, batteries, fittings and risers.
1. Maintenance includes, but is not limited to; tightening of loose fittings and packing nuts; flushing sprinkler heads, pipes, nozzles, valves, filters, strainers and backflow devices; adjusting sprinkler heads, anti-drain valves and pressure regulators, adjusting and lubricating controllers; and cleaning drip emitters.
- E. Irrigation repairs shall be made within the following time limits:

1. Mainline irrigation breaks shall be repaired within two (2) hours of identification or notification.
  2. All other irrigation repairs shall be made within one (1) day of identification or notification.
- F. Replacement of irrigation components shall be with originally installed materials of the same size and quality. Substitutions must be approved by the City Engineer in writing prior to installation.

## XXVIII. CONTROLLER PROGRAMMING

- A. The City Engineer may change the irrigation schedule as the need develops.
- B. Adequate soil moisture will be determined by programming the automatic sprinkler controllers as follows:
1. Whenever possible, automatic irrigation shall be programmed to operate **between the hours of 10:00 PM and 6:00 AM**. The Contractor shall turn off all irrigation systems during periods of rainfall and/or times when suspension of irrigation is desirable to conserve water while remaining within the guidelines of good horticulturally acceptable maintenance practices. **If water is found running, an equitable amount may be deducted from the Contractor's payment.**
  2. In areas where wind creates problems of spraying water onto private property or road rights-of-way, the controllers shall be set to operate during the period of lowest wind velocity which would normally occur at night.
  3. Consideration must be given to the soil conditions, seasonal temperatures, wind conditions, humidity, runoff and erosion potential and the relationship of conditions which affect day and night watering.
  4. Extremely close attention shall be paid to the demands of the plants as influenced by their exposure to sun or shade. Also, the variation in the size of plants, as well as varietal differences must be considered.
  5. The irrigation system will be controlled by the Contractor in such a way as not to cause an excessively wet area, which could interfere with the Contractor's ability to mow all turf.
  6. A soil probe shall be used to a depth of twelve (12) inches to determine the water penetration by random testing of the root zones.

- C. All landscaped and turf areas shall be irrigated as required to maintain adequate growth and appearance with a schedule most conducive to plant growth.

#### **XXIX. IRRIGATION CONTROLLER LOG BOOK**

- A. The Contractor shall furnish and maintain a controller logbook inside each controller cabinet in a waterproof packet.
- B. A controller schedule for each controller shall be submitted to the City Engineer for review and approval within two (2) weeks after the start date of the Landscape Contract.**
- C. This controller schedule shall be entered into the logbook upon approval. An entry shall be made in the logbook each time a controller program is checked, or a setting is changed.
- D. All changes in the controller schedule shall be submitted and approved by the City Engineer prior to implementation of the requested change.
- E. The log book shall record the date of the controller program check or change, the results of the program check or reasons for a program change, and the name and initials of the person responsible for the check or change.
- F. Upon completion or termination of the Contract Agreement, the logbook shall become the property of the City of Banning.

#### **XXX. TURF GRASS CARE**

- A. Turf Grass Mowing:
  - 1. The Contractor shall mow all turf grass with adequately sharpened reel or rotary type mowers as to provide a smooth and even cut without tearing of turf grass blades.
  - 2. The blade adjustment shall provide a uniform, level cut without ridges, depressions, or scalping.
  - 3. All turf grasses shall be cut at a height between one and three-quarter (1-3/4) and two (2) inches with a rotary type mower throughout the year.
  - 4. Turf grass mowing height adjustments during periods of renovation shall be approved by the City Engineer.
  - 5. All turf grass clippings shall be picked up and removed to a legal dumping site prior after each mowing.

6. Care shall be exercised to avoid depressions in the established grade from mowing when the soil is saturated.
7. A mowing schedule, established by the Contractor and approved by the City Engineer, shall be maintained. All areas shall be mowed weekly; however, the Contractor may request alteration of this mowing frequency during period of inclement weather or slow growth.

**B. Turf Grass Edging and Trimming**

1. Turf grass edging and trimming shall be performed weekly at the time of mowing.
2. Edging of turf grass shall be performed with a power edger containing a steel blade.
3. All turf grass adjacent to sidewalks, curbs, mowing strips, shrub beds and where no improved surface exists, shall be edged in a neat uniform line.
4. Trimming of turf grass shall be performed along walls, and around valve boxes, water meter boxes, backflow devices, trees, shrubs, or any structures located within the turf grass area.
5. A four (4) inch barren strip shall be provided, and maintained, between turf grass areas and adjacent ground cover. Edging of turf grass and ground cover shall provide uniform delineation adjacent to this barren strip.
6. Trimming of plant material may be required around sprinklers to provide maximum irrigation coverage.
7. All clippings and trimmings shall be removed from the work site the same day work is performed and prior to the Contractor vacating the work site.
8. After mowing and edging are completed, all adjacent walkways and gutters shall be swept clean.

**C. Turf Grass Fertilization**

1. The turf grass shall be fertilized four times a year to provide a healthy and vigorously growing turf grass with horticulturally acceptable growth and color.
2. Fertilization shall be performed with a balanced fertilizer, consisting of 16-6-8 ratio, at a rate of one (1) pound of actual Nitrogen per 1,000 square feet of area.
3. **The Contractor shall notify the City Engineer, in writing, five (5) working days prior to any fertilizer application. This written**



**document shall include the location and date the fertilizer application will be performed and the type of fertilizer and method of application to be used.**

4. The Contractor shall immediately irrigate after each fertilizer application.
5. All fertilizer applications shall be performed with properly calibrated equipment to provide a uniform application.

D. Turf Grass Renovation

1. All turf grass shall be renovated annually.
2. Renovation shall consist of aerating, verticutting, thatch removal and overseeding.
3. **The Contractor shall notify the City Engineer, in writing, five (5) working days prior to any renovation operation. This written document shall include the location and date the renovation will be performed and the type of equipment and materials to be used.**
4. The Contractor shall remove all renovation-generated debris from the work site the day of the renovation operation and prior to vacating the work site.
5. Aerating shall be performed between March 1 and March 31, and shall be performed with an aerator machine which has one-half (1/2) to one (1) inch in diameter coring tines spaced no more than six (6) inches apart. The machine shall remove cores from the turf a minimum of two (2) inches in length.
6. Overseeding shall be performed within two (2) days after verticutting with properly calibrated seeders.
  - a. Turf grass shall be overseeded at a rate of eight (8) pounds of seed per 1,000 square feet. Certified Perennial Ryegrass shall be used. Seed tags shall be provided to the City Engineer.
  - b. The overseed shall be covered with one-eighth (1/8) inch of topsoil. The topsoil must be approved by the City Engineer and not contain Steer Manure.
7. Reseeding of bare spots shall be performed continually throughout the year to reestablish turf to an acceptable quality.
  - a. Reseeding shall be performed with certified turf grass seed similar to the established turf at a rate of eight (8) pounds per 1,000 square feet.



- b. Seed shall be topped with one-eighth (1/8) inch of topper. The topper must be approved by the City Engineer and shall not contain Steer Manure.
- c. The City Engineer may require the use of sod when deemed necessary. Provided that the loss of turf grass was not due to the negligence of the Contractor, the Contractor shall be entitled to the wholesale cost of the sod only.

### **XXXI. GROUND COVER CARE**

- A. Ground covers are low growing plants that grow in colonies to form a solid mat over the surface of the ground. The plants give a flat or two-dimensional effect to the landscape, such as, but not limited to arctotheca, gazania, vinca, baccharis, ivy trachelosperum, and varieties of ice plant.

- B. Edging and Trimming of Ground Cover

- 1. Edging of ground cover areas shall be performed weekly.
- 2. All ground cover adjacent to sidewalks, curbs, mowing strips, or where no improved surface exists, shall be edged in a neat, uniform line.
- 3. All ground cover shall be continually trimmed at the dripline of all shrubs.
- 4. All ground cover shall be continually trimmed along walls, valve boxes, water meter boxes, backflow devices, or other structures located within the ground cover areas.
- 5. Trimming of ground cover may be required around sprinklers to provide maximum irrigation coverage.
- 6. All clippings and trimmings shall be removed from the work site the same day work is performed and prior to the Contractor vacating the work site.
- 7. After edging or trimming, the Contractor shall sweep clean all adjacent sidewalks or gutters.

- C. Cultivation of Ground Cover Areas

The open soil between plants shall be cultivated weekly where the planting permits.

- C. Renovation of Ground Cover Areas

Ground cover plantings shall be thinned and pruned for the health of the planting and the appearance of the site.

E. Replanting of Ground Cover Areas

Replanting shall be required to maintain the continuity of the ground cover area. Replacement material costs shall be incurred by the City; however, labor shall be provided by the Contractor at no additional cost to the City.

F. Ground Cover Fertilization

1. The ground cover shall be fertilized to provide a healthy and vigorously growing ground cover with horticulturally acceptable growth and appearance.
2. Fertilizing shall be performed with a balanced fertilizer, consisting of a 16-6-8 ratio, at a rate of one (1) pound actual Nitrogen per 1,000 square feet.
3. The Contractor shall immediately irrigate after each fertilizer application.
4. All fertilizer applications shall be performed with properly calibrated equipment to provide a uniform application.
5. **The Contractor shall notify the City Engineer, in writing, five (5) working days prior to any fertilizer application. This written document shall include the location and exact date of the fertilizer application and the type of fertilizer and method of application to be used.**

**XXXII. SHRUB CARE**

A. Pruning of Shrubs

1. **All shrubs shall be pruned annually in February, or more frequently if needed, to encourage healthy growth habits, removal of dead or damaged branches and maintain natural shape.**
2. Shrubs shall be pruned with sharp pruning tools.
3. Shrubs shall be pruned, as necessary, to prevent encroachment of passageways, walks, streets, and view of signs.
4. All pruning cuts shall be one-quarter (1/4) inch above a node (bud). No projections or stubs shall be allowed to remain.
5. The Contractor shall remove all clippings the same day shrubbery is pruned and prior to vacating the work site.
6. Pruning shall be done to maintain a well-groomed, laced-out appearance, and encourage air movement through the shrub.
7. Shearing, hedging or severe pruning shall not be permitted without prior

written permission from the City Engineer.

8. **The Contractor shall notify the City Engineer five (5) working days prior to the annual pruning, in writing, stating the exact location and date the annual pruning shall be performed.**

B. Shrub Fertilization

Shrubs shall be fertilized as necessary to maintain horticulturally acceptable health and color. Foliar fertilization may be performed when appropriate.

C. Shrub Replacement

1. All damaged, diseased (untreatable) or dead shrubs shall be replaced with the exact same species and size of plant material that existed.
2. Substitutions for any plant materials must have prior written approval by the City Engineer.
3. Original plans and specifications shall be consulted to determine correct identification of species.
4. All shrubs shall be guaranteed to live and remain in a healthy condition for no less than six (6) months from the date of installation, inspection and verification by the City Engineer.

- D. Care shall be taken to prevent soil build-up around the crown of shrubs.

### XXXIII. TREE CARE

A. Tree Trimming

1. The Contractor shall be responsible for all tree trimming to a height of twenty (20) feet.
2. All trees in the work site shall be maintained in their natural shapes. This work shall be accomplished in a manner which will insure that each individual tree is trimmed carefully to promote the tree's health and appearance.
3. All work shall be of the highest quality and performed in accordance with approved professional tree trimming standards.
4. All trees shall be pruned to remove or prevent encroachment where it blocks vision, or encroaches in any manner deemed undesirable by the City Engineer.
5. All trees shall be maintained free of dead, diseased and damaged branches

back to the point of breaking. Cuts must be made flush with the parent limb, or trunk to promote proper healing.

6. All sucker growth is to be removed from trees as it occurs.
7. The Contractor shall maintain all branches to avoid encroachment on sidewalks and curb lines at a height less than ten (10) feet.
8. All branches which encroach over private property shall be removed as directed.

B. Tree Staking

1. The Contractor shall, at no additional cost to the City, stake and tie all trees which require support.
2. Tree stakes shall be pentachlorophenol treated lodgepole pine not less than eight feet (8') in length for five-gallon size trees, and not less than ten feet (10') for fifteen-gallon size trees. Two (2) tree stakes are required per tree.
3. Guide wires will be of pliable, zinc-coated ten-gauge wire (three ties per tree), and should have a white P.V.C. sleeve for visibility.
4. Trees shall be secured to stakes with cinch ties or equivalent and shall be removed at the direction of the City.
5. Stakes shall not be placed closer than eight (8) inches from the tree trunk.
6. Stakes and ties shall be placed so no chafing of bark occurs and shall be checked frequently, and re-tied as necessary, to prevent girdling.

C. Tree Replacement

1. The Contractor shall be responsible for the complete removal and replacement of trees lost due to the Contractor's faulty maintenance or negligence, as determined by the City Engineer.
  - a. Replacement shall be made by the Contractor with the kind and size tree determined by the City Engineer.
  - b. Where there is a difference in value between the tree lost and the replacement tree, this difference will be deducted from the Contractor's payment.
  - c. In all cases the value of the trees lost will be determined by the City Engineer, using the latest American Shade Tree Conference guidelines for value determination.
2. Downed trees, due to any cause, shall be removed and the stump ground to a depth of grade level and re-filled the same day of identification or notification.
3. Trees lost from causes other than the Contractor's negligence shall be

replaced by the Contractor with a fifteen (15) gallon size tree and billed according to Section VIII. The City Engineer may specify a species of tree for replacement different from the one lost.

D. Fertilization

The Contractor shall fertilize trees as necessary to maintain horticulturally acceptable health and color.

E. Tree Irrigation

1. All trees shall be adequately irrigated to maintain a healthy and attractive appearance.
2. Irrigation run-off and overspray shall be minimized.
3. Trees shall be irrigated in a method which promotes deep root growth.

#### **XXXIV. GENERAL CLEAN-UP**

- A. The Contractor shall remove all trash and accumulated debris from the work sites. In addition, dog feces are also to be removed from the walkways, turf or ground cover areas.
- B. The Contractor shall remove all litter from the maintained area daily, five (5) days per week (Monday through Friday).
- C. The Contractor is responsible for removal of all weeds and grass growing in and around the curb and gutter area. The Contractor is responsible to insure the roadway is cleared of all dirt and debris within four (4') feet of the curb and gutter in all areas adjacent to maintenance responsibilities.
- D. The Contractor is responsible for cleaning walkways immediately following mowing and edging and by use of power sweeping or blower equipment not less than once per week. This includes removal of all foreign objects from surfaces such as gum, dog feces, grease, paint and graffiti. All walkway cracks and expansion joints shall be maintained weed and grass free at all times.
- E. The Contractor shall maintain all drains and catch basins free of siltation and debris at all times. All v-ditches and drainage areas shall be kept clean and edged weekly by the Contractor.
- F. The Contractor shall remove all accumulated leaves from all areas not less than once per week.

#### **XXXV. NATURAL AREAS**

- A. All natural areas shall be maintained in an existing state except for the following items, which shall be performed on a **weekly basis**:
  - 1. Remove all trash and debris, or other items as determined by the City Engineer, to a legal dumping site.
  - 2. Provide and maintain a fifteen (15) foot barren area adjacent to any improved area.
  - 3. Remove and/or repair any dead or broken branches or safety hazards within two (2) hours of identification or notification.
  - 4. Maintain all gates and entryways in a safe and usable condition.

#### **XXXVI. REPAIR OF WALKWAYS AND MISCELLANEOUS IMPROVEMENTS**

- A. All walkways shall be maintained by the Contractor so as to keep the integrity of the walking surface in a safe, unimpaired condition. The Contractor shall be entitled to additional compensation, subject to approval by City as stated in Section VIII.
- B. The Contractor will not be responsible for total replacement of walkways as a result of normal deterioration, but will be required to replace all improvements damaged by his negligence.
- C. It will be the responsibility of the Contractor to repair or replace miscellaneous improvements such as signs and mowing strips, or any other structural improvements within the work sites, unless otherwise specified. The Contractor shall be entitled to additional compensation, subject to approval from City, for these services as stated in Section VIII.

#### **XXXVII. EMERGENCY CALLS**

- A. The Contractor shall have the capability to receive and respond immediately to calls of an emergency nature during normal working hours and outside of normal working hours.
- B. Calls of an emergency nature received by the City Engineer shall be referred to the Contractor for immediate disposition.
- C. If the Contractor cannot be reached within two (2) hours the City will deduct from the monthly billing the cost of City forces, or other sources, used to repair the emergency.

#### **XXXVIII. EXTRAORDINARY SERVICES**



- A. The Contractor shall be responsible for providing extraordinary maintenance repairs to existing landscape and new landscape areas.
  - 1. Extraordinary maintenance shall include answering emergency calls as required. The Contractor shall respond to an emergency call within two (2) hours. The contractor shall maintain a 24 hours a day on-call service for emergency calls.
  - 2. The Contractor shall notify the City Engineer, or his representative by telephone within 24 hours of any emergency extraordinary work that is performed. Non-emergency extraordinary work requires written approval before the work is performed.
  - 3. The Contractor shall be compensated for extraordinary work as defined in Section VIII.
- B. In situations involving emergency repair work after normal work hours, the Contractor shall dispatch qualified personnel and equipment to reach the site within two (2) hours.
  - 1. The Contractor's vehicle shall carry sufficient equipment to effect safe control of traffic.
  - 2. When the Contractor arrives at the site, the Contractor shall set up traffic warning and control devices, if deemed necessary and make the required repairs.
- C. If a City representative is at the site when the Contractor arrives, the Contractor shall quickly evaluate the situation and discuss it with the representative.
- D. An emergency may be called by the following individuals or their designated representative, at any time for extraordinary services involving repair work:
  - 1. City Manager
  - 2. Public Works Director
  - 3. Police Chief
  - 4. City Engineer

#### **XXXIX. EXECUTION OF CONTRACT**

- A. The Contractor shall maintain all work under the Contract Agreement from date of award through termination of contract.
- B. **The date of award shall be determined by the City.**

- C. The date of termination shall be as stated on the Contract Agreement; however, the Contract is subject to extension or termination as described in these Specifications/Scope of Services and in the Contract Agreement.
- D. Approved Change Orders shall be completed within 30 days of being issued in accordance with Section VIII.
- D. Any documented punch list/inventory list shall be completed within two (2) weeks of the award of contract. If not completed within two (2) weeks, the documented punch list may be deemed as unsatisfactory performance and subject to termination procedures.
- E. **CONTRACT DOCUMENTS**

In submitting a Proposal, the Company agrees to enter into an Agreement with the City *without exceptions to the City's standard agreement*. The City's standard agreement is **non-negotiable**, and a copy of the standard agreement is attached hereto as Attachment "C". **Any change to the standard agreement will deem the Proposal non-responsive.** In the event of a conflict exists between documents the following order of precedence shall apply:

- Agreement
- City of Banning's Request For Proposals
- Company's Response to the Request For Proposals
- Performance and Payment Bonds (Attachment C)

F. **EXECUTION OF AGREEMENT**

After contract award, the following shall be signed and returned to the City within fourteen (14) calendar days from the date the City mails, or by other means delivers said documents to the Company:

- Three (3) original copies of the Agreement in the form included herein, properly executed by the Company.
- Certificates of Insurance and Additional Insured Endorsement evidencing coverage as specified in the sample agreement.
- Confirmation of current business tax certificate.
- Bonds, if required.

In any event that day fourteen (14) of calendar days falls on Saturday, Sunday, a legal holiday for the State of California, or on days when the City is closed, the Contract Documents shall be delivered by the following working day.

No Agreement shall be binding upon the City until all documents are fully executed by the Company and the City.

**G. PERFORMANCE AND PAYMENT BONDS (attachment C)**

Contractor shall furnish to City a surety bond in an amount equal to 100 percent of Contract price as security for faithful performance of this Contract and shall furnish a separate bond in 100 percent of the Contract price as security for payment of persons performing labor and furnishing materials in connection with this Contract. Aforesaid bonds shall be in the form set forth in these contract documents.

The party to whom the Contract is awarded will be required to execute the Agreement and submit the Payment Bond, Contract Performance Bond, and Insurance Certificates on the required forms within fifteen (15) calendar days from the date when Notice of Award is delivered to the Bidder.

The Notice of Award shall be accompanied by the necessary Agreement, Bond, and Insurance Certificate forms. In case of failure of the bidder to execute the Agreement, the Owner may at his option consider the bidder in default; in which case the Bid Bond accompanying the proposal shall become the property of the Owner.

The Owner, within fifteen (15) days of receipt of acceptable Payment Bond, Contract Performance Bond, Insurance Certificates, and Agreement signed by the party to whom the Contract was awarded, shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the Owner not execute the Agreement within such period, the Bidder may by Written Notice withdraw his signed Agreement. Such notice of Withdrawal shall be effective upon receipt of the notice by the Owner.

**H. FAILURE TO EXECUTE THE AGREEMENT**

Failure to execute the Agreement and furnish the required insurance and business tax certificate, within the required time period shall be just cause for the rescission of the award. If bonds are also required, failure to furnish sufficient bonds shall cause rescission of the award. If the successful Company refuses or fails to execute the Agreement, the City may award the Agreement to the next qualified Company.

**I. CANCELLATION**

The City retains the right to cancel this RFP at any time, should it be deemed to be in the best interest of the City. No obligation either expressed or implied exists on the part of the City to make an award based on the submission of any proposals.

**XL. METHOD OF PAYMENT**

- A. The Contractor will be paid monthly for satisfactory work, as determined by the Public Works Director, performed under the Contract Agreement.
- B. Billing adjustments may be made where authorized by the Contract Agreement.
- C. On or about the first of each month the Contractor shall submit an invoice and all reports required in the Contract Agreement for work performed in the prior month.
  - 1. This invoice shall be in accordance with the contract price and shall become the basis for payment.
  - 2. This invoice shall be subject to review and approval by the City Engineer.
  - 3. All submitted invoices, approved by the City Engineer, shall require three (3) weeks for processing by the City of Banning, Finance Department.
  - 4. Any charges in the invoice not approved by the City Engineer shall not be paid by the City.

#### **XLI. DISCREPANCIES OR OMISSION**

- A. Should a bidder find discrepancies or omissions in the plans, specifications or other documents, or be in doubt as to their true meaning, he may request a written interpretation from the City Engineer or his designee.
- B. Any interpretation, or change in the proposed documents, will be made only by Addendum issued to each person to whom bid forms have been issued and shall become a part of the bid.

#### **XLII. MINOR MODIFICATION**

The City Engineer may modify these specifications with the joint approval of the Contractor.

#### **XLIII. CONTRACTOR NONCOMPLIANCE**

- A. If the City Engineer determines that there are deficiencies in the performance of the Contract Agreement, the City Engineer will provide a written notice to the Contractor stating the deficiencies and specifying a time frame to correct the specified deficiencies. This time frame shall be reasonable, as determined by the City Engineer, to correct the specified deficiencies.
- B. Should the Contractor fail to correct any deficiencies within the stated time frame, the City Engineer may exercise the following measures:

1. Withhold the entire or partial payment.
  2. Utilize City forces, or an alternate source, to correct the deficiency and deduct from the Contractor's payment the total cost, including City overhead.
  3. Deduct liquidated damages. Since it is extremely difficult to set a price on the extent of actual damages which result from failure to correct a deficiency within a stated time frame; a reasonable estimate of such damages shall be set at \$200 per day, or a portion thereof, for each deficiency which exceeds the stated time frame.
- C. The action above shall not be construed as a penalty but as an adjustment of payment to the Contractor to recover City of Banning cost due to the failure of the Contractor to complete or comply with the provisions of the Contract Agreement.
- D. The City Engineer shall decide all questions which arise as to the manner of performance and completion per schedule, acceptable fulfillment of the contract by the Contractor, interpretation of the specifications, and compensation to include completion of work by alternate sources.

#### **XLIV. PAYMENTS WITHHELD**

- A. The City may withhold entire or partial payment for reasons as follows:
1. Work required in the specifications which is defective, incomplete or not performed.
  2. Claims filed, or reasonable evidence indicating probable filing of claims, by supplier, etc.
  3. Failure of the Contractor to make payments to subcontractors, or for materials and/or labor.
  4. Reports, logs or written documentation required of the Contractor to be delivered to the City Engineer which are incomplete or not performed.

#### **XLV. WITHHELD CONTRACT FUNDS**

The Contractor may, at his sole cost and expense, substitute securities equivalent to any moneys withheld by the City to insure performance under the contract. Such securities shall be deposited with the City or with a State or Federally Chartered Bank as escrow agent who shall pay such moneys to the Contractor upon satisfactory completion of the contract. The Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon. Securities eligible for investment under this section shall include those listed in Public Contract Code Section 22300.



**XLVI. CONTRACT TERMINATION**

- A. The City reserves the right to terminate the Contract Agreement, without penalty, for cause immediately or without cause after thirty (30) days written notice thereof is delivered to the Contractor either personally or by mail addressed as shown on the purchase order form. The Contract Agreement may be terminated by the City of Banning, at any time and without cause, upon 30 days prior written notice to the party. The Contract Agreement may be terminated by the Contractor at any time and without cause, upon 90 days prior written notice to the City of Banning (Owner).
- B. In the event of such termination, the bonds required shall remain in effect for six (6) months after the date of termination to provide surety that any remedial work required at the time of termination will be completed.
- C. If the Contract Agreement is terminated by either Contractor or Owner, Contractor shall furnish the services necessary to continue normal operations, for a period up to ninety (90) days after the termination date. This ninety (90) day period will commence only at the Owner's request. Such period shall be for the purpose of continued supervision and of assisting in the placement and training of Landscape Maintenance District personnel to be furnished by the Owner or other persons. In such event, Owner shall pay Contractor at then existing rates of compensation during such ninety (90) day period.
- D. Upon termination by either Owner or Contractor, the Owner may employ, at Owner's sole discretion, as Owner's employees, all or any personnel then employed by the Contractor for Owner's operation of the Landscape Maintenance District No. 1.
- E. If the Contractor fails to meet the specifications of this contract for any fifteen (15) consecutive days, the City may at its option terminate the balance of this contract by written notice of termination to the Contractor. Notice of such termination shall take effect three (3) days after such notice is mailed.

**XLVII. COMPLAINTS FROM CITY OF BANNING**

- A. **The Contractor shall maintain a monthly written log of all complaints, which includes the date and time received and the action taken or the reason for non-action. The monthly log of complaints shall accompany the monthly invoice.**
- B. **All complaints shall be abated as soon as possible after notification; but in all cases within 24 hours, to the satisfaction of the City Engineer.**
- C. If any complaint is not abated within 24 hours, the City Engineer shall be notified



immediately of the reason for not abating the complaint, followed by a written report to the City Engineer within five (5) days.

- D. If the complaints are not abated within the time specified, or to the satisfaction of the City Engineer, the City Engineer may correct the specific complaint and the total cost incurred by the City of Banning will be deducted and forfeited from the payments owing to the Contractor from the City of Banning.

#### **XLVIII. HOLD HARMLESS AND CITY INSURANCE REQUIREMENTS**

The Contractor shall not commence work under the contract until it has secured all insurance required under this section. In addition, the Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

- A. Minimum Requirements. The contractor shall, at its expense, procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the Work hereunder by the Contractor, its agents, representatives, employees, or subcontractors. The Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage:
- B. Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); (3) *Workers' Compensation and Employers' Liability*: Workers' compensation insurance as required by the State of California and Employer's Liability Insurance.
- C. Minimum Limits of Insurance. The Contractor shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Contract/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; (3) *Workers' Compensation and Employer's Liability*: Worker's compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

- D. Insurance Endorsements. The insurance policies shall contain the following provisions, or the Contractor shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:
- E. General Liability. (1) The City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the Work or operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it.
- F. Automobile Liability. (1) The City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it.
- G. Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arises from work performed by the Contractor.
- H. All Coverages. Each insurance policy required by the Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and volunteers.
- I. Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insured's provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and

volunteers.

- J. Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. The Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents and volunteers; or (2) the Contractor shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.
- K. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City's current standards.
- L. Verification of Coverage. The Contractor shall furnish the City with original certificates of insurance and endorsements effecting coverage required by the Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
- M. Subcontractors. All subcontractors shall meet the requirements of this section before commencing Work. In addition, the Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**XLIX. CONTRACTOR IS AN INDEPENDENT CONTRACTOR: INDEMNIFICATION**

- A. The Contractor shall act under the contract as an Independent Contractor through the City of Banning and will not be an agent, or employee of the City.
- B. The Contractor shall not represent or otherwise hold out itself or any of its subcontractors, directors, officers, partners, employees or agents, to be an agent or employee of the City.
- C. The Contractor shall indemnify and otherwise hold harmless the City, its officials, officers, directors, employees, agents and other representatives, from all liability loss, or damage (including reasonable attorney's fees and other costs of defense resulting from damage or injury to persons or property caused, or claimed to have been caused, by acts or omissions of the contractor, or of any of its subcontractors, directors, officers, partners, employees, or agents in the course of,

or in connection with, the Contractor's performance under the contract).

- D. The parties agree to cooperate fully in the resolution of any claims for such liability, loss or damage.

#### **L. SUBCONTRACTOR/ASSIGNMENT OF CONTRACT**

- A. Reference is hereby made to the provisions of The Subletting and Subcontracting Fair Practices Act (Public Contracts Code Sections 4100. et. seq.).
- B. A copy of each subcontract, if in writing, or if not in writing, then a written statement signed by the Contractor, giving the name of the subcontractor, and the terms and conditions of such subcontract, shall be filed with the City before the subcontractor begins work. Each subcontract shall contain a reference to this Contract Agreement between the City and the Contractor, and the terms of that Contract Agreement between the City and the Contractor and all parts thereof shall be made a part of such subcontract insofar as applicable to the work covered thereby. Each subcontract shall provide for its annulment by the Contractor at the order of the City, if, in the City's opinion, the subcontractor fails to comply with the requirements of the principal contract insofar as the same may be applicable. Nothing herein contained shall create any contractual relation between any subcontractor and the City or relieve the Contractor of any liability or obligation hereunder.
- C. The Contractor shall not assign, transfer, convey or otherwise dispose of this contract, or of his rights or interests in or to the same or any part hereof without the previous consent in writing of the City. If the Contractor, without such previous written consent, assigns, transfers, conveys, or otherwise disposes of the contract, or of his rights or interests therein, the contract may, at the option of the City, be terminated and revoked, and the City shall thereupon be relieved and discharged from any and all liability and obligations arising out of the same to the Contractor, and to his assignee or transferee. No right under the contract, nor any right to any money to become due hereunder, shall be asserted against the City in law or equity by reason of any so-called assignment of the contract, or any part thereof unless authorized by the written consent of the City.

#### **LI. COMPLIANCE WITH THE LAW**

- A. The Contractor agrees that his performance under this contract shall comply with all applicable laws of the United States of America, the State of California, the County of Riverside, the City of Banning and any other political entity having jurisdiction over the activities of the contractor.
- B. **The Contractor State License Board for the State of California has administratively determined, in writing, that a C-27 Landscape Contractor**



**License is required to provide the service as set forth in the contract and specifications. Therefore, each bidder will be required to hold a valid C-27 Landscape Contractor License.**

- C. The State of California Department of Food and Agriculture has advised the City of Banning of the following:
1. Prior to any pesticide application a written recommendation from a valid, licensed California Agricultural Pest Control Advisor must be secured.
  2. A valid California Agricultural Pest Control Operators License is required to apply chemicals during the landscape maintenance operation.
  3. Therefore, each bidder shall be required to have valid Agricultural Pest Control Licenses, or indicate in writing how they shall comply with State and California Food and Agricultural codes.

## **LII. PAYROLL**

- A. Section 1776, Chapter 1 of Division 2, from the California Labor Code requires that each Contractor and Subcontractor keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and each week and the actual per diem wages paid each journeyman, apprentice or worker employed by him.
- B. Payrolls must meet the attached Public Works Contract requirements and be submitted as required and stated. The employee's own payroll records shall be available for inspection, and a copy shall be made available to the employee or his authorized representative, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standard.
- J. Pursuant to Labor Code Section 1778.8, the Contractor agrees to pay travel and subsistence payments to each workman needed to execute the work in accordance with the applicable collective bargaining agreements filed with the Department of Industrial Relations.

## **LIII. LABOR STRIKE**

- A. It will be the responsibility of the Contractor to provide continuous maintenance services, without any interruption.
- B. In case of any labor strikes, the Contractor shall provide other means, at its own cost, to provide a comparable continuous service as if there were no strike.
- C. Failing to do so will cause the City to take whatever action is deemed necessary to provide such service and the cost will be borne by the Contractor.

#### LIV. PREVAILING WAGES PROVISION

##### Prevailing Wages Requirements

In responding to this request, all professional firms or contractors agree to comply with prevailing wage requirements, the Department of Industrial Relations, as further described below:

1. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates, that Contractor and all subcontractors must be registered and pay the registration fee with the Department of Industrial Relations (DIR), Contractor shall be subject to compliance monitoring and enforcement by the DIR, and the performance of other requirements on "Public Works" and "Maintenance" projects. If the services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

##### **California Department Industrial Relations Registrations**

1. In 2014, the California legislature enacted several laws impacting public works contracting. Senate Bill 854 (SB 854) creates changes in the way DIR monitors prevailing wage requirements. All contractors and subcontractors must register with the DIR and meet DIR requirements before bidding on public works contracts in California. No contractor or subcontractor may be awarded a contract for public work or public works project unless registered with the DIR.
2. All contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement).
3. Public Work Contractors/Subcontractors can register with the DIR at [www.dir.ca.gov/Public-Works/](http://www.dir.ca.gov/Public-Works/).

**In accordance with the provisions of the California Labor Code, not less than the general prevailing rate of per diem wages for each craft, or type of workman and mechanic needed to execute the contract in the locality in which the work is to be performed, and not less than the general prevailing rate of per diem wages for holidays and overtime work, as determined by the**



Director of Industrial Relations of the State of California, shall be paid to all workmen employed. Wage rates to be paid shall be the most current of the General Prevailing Wage Determinations made by the Director of Industrial Relations, pursuant to California Labor Code, Part 7, Chapter I, Article 2, Sections 1770, 1773, and 1773.1. It is the Contractor's responsibility to ensure the current wage rates in effect are being paid on the various crafts used on this Project.

**LV. LABOR DISCRIMINATION**

- A. Attention is directed to Section 1735 of the Labor Code, as added by Chapter 643, Statutes of 1939, which reads as follows:

"No discrimination shall be made in the employment of persons upon Public Works because of the race, religion, creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex of such persons, except as provided in Section 12940 of the Government Code, and every Contractor for Public Works violating this section is subject to all the penalties imposed for a violation of this chapter."

**LVI. APPRENTICESHIP STANDARD**

Where required under law, the prime Contractor on this project shall assume full responsibility for compliance with apprenticeship standards as established by Section 1777.5 of the California State Labor Code.

**LVII. PATENTS**

The Contractor shall assume all responsibilities arising from the use of patented materials, equipment, devices, or processes used on, or incorporated in, the work.

**LVIII. ANTI-TRUST CLAIMS**

In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 of Part 2 of Division 7 of the Business and Professions Code), arising from the purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

**LIX. NOTICES**

- A. Any notice, demand, request, consent, approval, or communication that either party desires, or is required to give to the other party or any other person, shall be in writing and either served personally, sent by prepaid, first-class mail, or by facsimile followed by mailing of said notice.
- B. Any notice demand, request, consent, approval, or communication that either party desires, or is required to give to the other party, shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address.
- C. Notice shall be deemed communicated two (2) City working days from the time of mailing if mailed as provided in this paragraph.
- D. Address for notification:
  - 1. City of Banning  
 Attn: Public Works Director/City Engineer  
 Public Works Department  
 P. O. Box 998  
 Banning, CA 92220
  - 2. Contractor: \_\_\_\_\_  
 ATTN: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**ATTACHMENT “A”****LOCATION MAP OF LANDSCAPE MAINTENANCE DISTRICT NO. 1**

NOTE: Numbers one through sixteen are currently part of LMD No.1; Tract No. 36939 is NOT included yet.

# Map of Landscape Maintenance District No. 1 2019-2020



## Legend

### Existing Tracts

1. 21882 Snow Creek I
2. 22810 Dev. Corp
3. 22811 Dev. Corp
4. 22913 Arce Bros.
5. 23446 Highland Estates
6. 23598 Snow Creek II
7. 28252 Fair Oaks
8. 29721 The Pines
9. 30186 Wilson Homes
10. 30222 Wilson Homes
11. 30793 Fiesta Collection
12. 30906 Evergreen Estates
13. 31833 Fair Oaks
14. 31834 Fair Oaks
15. 31835 Fair Oaks
16. 32109 Sunset Ridge
17. Tentative Tract Map 36939 Wilson 97

N San Geronimo Ave

W Gilman St

Susan B. Coombs Intermediate

W Wilson St

W George St

Reppner Park

W Nicolet St

W Williams St

San Bernardino Fwy

W Lincoln St

W Westward Ave

S 22nd St

Banning High School

Charles St

Lions Park

S 4th St

S 8th St

S 12th St

Wesley St

E Barbour St

S 16th St

S 18th St

S 20th St

S 22nd St

S 24th St

S 26th St

S 28th St

S 30th St

S 32nd St

S 34th St

S 36th St

S 38th St

S 40th St

S 42nd St

S 44th St

S 46th St

S 48th St

S 50th St

S 52nd St

S 54th St

S 56th St

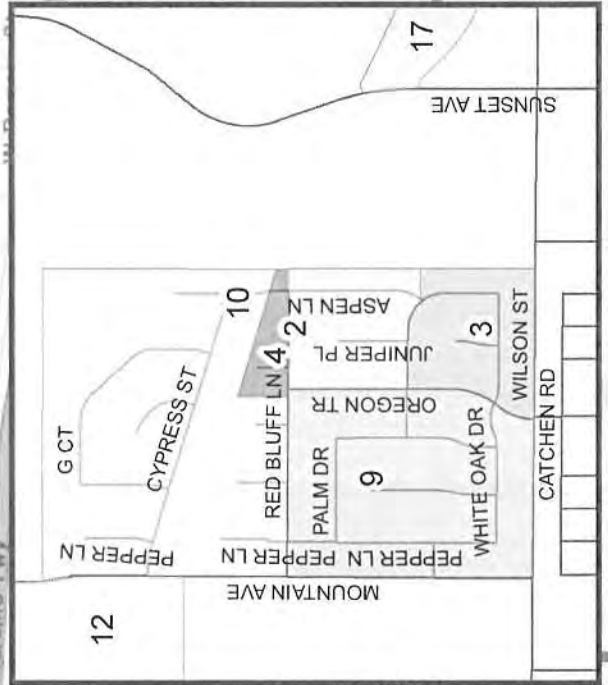
S 58th St

S 60th St

S 62nd St

S 64th St

S 66th St



# ATTACHMENT 5

*(Draft Professional Services Agreement)*

**AGREEMENT FOR CONTRACT SERVICES (C00498)  
FOR OPERATION AND MAINTENANCE OF  
LANDSCAPE MAINTENANCE DISTRICT NO. 1**

**By and Between**

**THE CITY OF BANNING,  
A MUNICIPAL CORPORATION**

**and**

**ARTISTIC MAINTENANCE,  
a California corporation**



**AGREEMENT FOR CONTRACT SERVICES (C00498) FOR OPERATION AND  
MAINTENANCE OF LANDSCAPE MAINTENANCE DISTRICT No.1 BY AND  
BETWEEN CITY OF BANNING AND ARTISTIC MAINTENANCE**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 by and between the **CITY OF BANNING, a municipal corporation** ("City") and **ARTISTIC MAINTENANCE, a California corporation** and licensed contractor (California License Number 703401) ("Contractor"). City and Contractor are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

**RECITALS**

A. City has sought, by issuance of a Request for Proposals (RFP No. 19-030), the performance of the Services defined and described particularly in Article 1 of this Agreement.

B. Contractor, following submission of a proposal or bid for the performance of the Services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those Services.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of those Services defined and described particularly in Section 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. SERVICES OF CONTRACTOR**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those Services specified in the "Scope of Services" attached hereto as Exhibit "A" and "A-1" and incorporated herein by this reference, which Services may be referred to herein as the "Services" or "Work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the Services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the Work and Services contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all Services described herein. Contractor covenants that it shall follow the highest professional standards in performing the Work and Services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of

practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Contractor's Proposal.

The Scope of Services shall include the Contractor's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Contractor shall keep itself informed concerning, and shall render all Services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the Services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the Services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the Scope of Services to be performed, (ii) has carefully considered how the Services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the Services under this Agreement. If the Services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of Services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the Services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the Work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof, to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Work by City, except such losses or damages as may be caused by City's own negligence.

### 1.7 Warranty.

Contractor warrants all under the Agreement (which for purposes of this Section shall be deemed to include unauthorized Work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees to warranty labor for ninety (90) days. Parts, materials, and workmanship for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at his sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any Work damaged by such Work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit "B" if the Services hereunder do not include construction of any improvements or the supplying of equipment or materials.

### 1.8 Prevailing Wages.

Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000.00 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.



### 1.9 Further Responsibilities of Parties.

Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither Party shall be responsible for the Services of the other.

### 1.10 Additional Services.

City shall have the right at any time during the performance of the Services, without invalidating this Agreement, to order extra Work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said Work. No such extra Work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000.00, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. It is expressly understood by Contractor that the provisions of this Section shall not apply to Services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the Services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

### 1.11 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

## **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.**

### 2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and "C-1", and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed, SIXTY THREE THOUSAND ONE HUNDRED AND FIFTY DOLLARS (\$63,150.00) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.10.

### 2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the Services, (iii) payment for time and materials based upon the Contractor's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

### 2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Scope of Services shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the Work with City is a critical component of the Services. If Contractor is required to attend meetings in addition to the project meetings, to facilitate coordination of the Services and/or Work, Contractor shall not be entitled to any additional compensation for attending said meetings.

### 2.4 Invoices.

Each month Contractor shall furnish to City an original invoice for all Work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor charges. Sub-contractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by the Contractor to determine whether the Work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for Work performed or expenses incurred by Contractor which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission.

### 2.5 Waiver.

Payment to Contractor for Work performed pursuant to this Agreement shall not be deemed to waive any defects in Work performed by Contractor.

## **ARTICLE 3. PERFORMANCE SCHEDULE**

### 3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

### 3.2 Schedule of Performance.

Contractor shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all Services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference.

### 3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor,

including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

#### 3.4 Inspection and Final Acceptance.

City may inspect and accept or reject any of Contractor's Work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor's Work within forty-five (45) days after it is submitted to City. City shall accept Work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any Work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Article 1 and 5, pertaining to warranty, and indemnification and insurance, respectively.

#### 3.5 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, the term of this Agreement shall commence upon execution by both Parties and shall expire on June 30, 2020, or extended in writing in advance by both Parties. Maximum term and any subsequent amendment or modification shall not exceed five (5) years.

### **ARTICLE 4. COORDINATION OF WORK**

#### 4.1 Representatives and Personnel of Contractor.

The following principal of Contractor (Principal) is hereby designated as being the principal and representative of Contractor authorized to act in its behalf with respect to the Work specified herein and make all decisions in connection therewith.

Thomas Hernandez, President

#### 4.2 Representative Name, Title.

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principal was a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the Services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principal. For purposes of this Agreement, the foregoing Principal may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any,



assigned to perform the Services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the Services required under this Agreement, prior to and during any such performance.

#### 4.3 Status of Contractor.

Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

#### 4.4 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the Services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### 4.5 Independent Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the Services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all Services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

#### 4.6 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the Services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative

basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

## **ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS**

### **5.1 Insurance Coverages.**

Throughout the life of this Agreement, Contractor shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) that meet the standards specified in Section 5.5. The following policies of insurance are required:

(i) **COMMERCIAL GENERAL LIABILITY** insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of liability of not less than the following:

\$1,000,000 per occurrence for bodily injury and property damage

\$1,000,000 per occurrence for personal and advertising injury

\$2,000,000 aggregate for products and completed operations

\$2,000,000 general aggregate

(ii) **COMMERCIAL AUTOMOBILE LIABILITY** insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 Any Auto) with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

(iii) **WORKERS' COMPENSATION** insurance as required under the California Labor Code.

(iv) **EMPLOYERS' LIABILITY** insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

(v) **PROFESSIONAL LIABILITY** Professional Liability (Errors and Omissions) insurance appropriate to Contractor's profession, with limits of liability of \$1,000,000 per claim/occurrence and \$1,000,000 policy aggregate.

In the event Contractor purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

If this Agreement continues for more than three (3) years duration, or in the event the City Manager or his/her designee determines that the work or Services to be performed under this Agreement

creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City Manager, or his/her designee.

Contractor shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Contractor shall also be responsible for payment of any self-insured retentions.

Any deductibles or self-insured retentions must be declared to, and approved by, the City Manager or his/her designee. At the option of the City Manager or his/her designee, either: (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to City, its Council members, officers, officials, employees and agents; or (ii) Contractor shall provide a financial guarantee, satisfactory to the City Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the City be responsible for the payment of any deductibles or self-insured retentions.

## 5.2 General Requirements.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Contractor shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Contractor shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form. The General Liability (including ongoing and completed operations) and Automobile Liability shall name City and its officers, officials, employees, agents and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Contractor's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to the City and its officers, officials, employees, agents and volunteers. The Workers' Compensation insurance policy shall contain a waiver of subrogation as to City and its officers, officials, employees, agents and volunteers. Should Contractor maintain insurance with broader coverage and/or limits of liability greater than those shown above, City requires and shall be entitled to the broader coverage and/or the higher limits of liability maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Contractor.
2. Insurance must be maintained and evidence of insurance must be provided for at least three years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a three-year discovery period.



3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by Contractor, Contractor must purchase extended reporting coverage for a minimum of three years following the expiration or termination of the Agreement.

4. A copy of the claims reporting requirements must be submitted to City for review.

5. These requirements shall survive expiration or termination of the Agreement.

Contractor shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the City Manager or his/her designee prior to City's execution of the Agreement and before work commences.

If at any time during the life of this Agreement or any extension, Contractor or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to Contractor shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City hereunder shall in any way relieve Contractor of its responsibilities under this Agreement.

Upon request of City, Contractor shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City and its officers, officials, employees, agents and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its principals, officers, employees, agents, persons under the supervision of Contractor, vendors, suppliers, invitees, subcontractors, or anyone employed directly or indirectly by any of them.

If Contractor should subcontract all or any portion of the Services to be performed under this Agreement, Contractor shall require each subcontractor to provide insurance protection in favor of City and its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Contractor and City prior to the commencement of any work by the subcontractor.

### 5.3 Indemnification, Hold Harmless, and Duty to Defend.

#### A. Indemnities.

1) To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers,

attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors, materialmen, Contractors or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Contractor shall pay all required taxes on amounts paid to Contractor under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor shall indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2).

3) Contractor shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. If Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, Contractors or their officers, agents, servants or employees (or any entity or individual that Contractor's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Contractor's indemnifications and obligations under this Section, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The

indemnities in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Contractor's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.

#### 5.4 Performance Bond.

Concurrently with execution of this Agreement, and if required in Exhibit "B", Contractor shall deliver to City performance bond in the sum of the amount of the Contract Sum, in the form provided by the City Clerk, which secures the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

#### 5.5 Sufficiency of Insurer or Surety.

Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than three (3) years duration, or in the event the Risk Manager determines that the work or Services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Contractor shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within ten (10) days of receipt of notice from the Risk Manager.

### **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

#### 6.1 Records.

Contractor shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and Services performed hereunder (the "Books and Records"), as shall be necessary to perform the Services required by this Agreement and enable the Contract Officer to evaluate the performance of such Services. Any and all such Books and Records shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such Books and Records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such Books and Records. Such Books and Records shall be maintained for a period of 3 years following completion of the Services hereunder, and the City shall have access to such Books and Records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the Books and Records may be given to City, and access shall be provided by Contractor's successor in interest.



## 6.2 Reports.

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the Services required by this Agreement as the Contract Officer shall require. Contractor shall submit to the City Engineer the required monthly forms as listed in Section V. Scope of Work, section F. with each monthly invoice. Contractor hereby acknowledges that the City is greatly concerned about the cost of Work and Services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the Work or Services contemplated herein or, if Contractor is providing Design Services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design Services, the estimated increased or decreased cost estimate for the project being designed.

## 6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "Documents and Materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the Documents and Materials hereunder. Any use, reuse or assignment of such completed Documents and Materials for other projects and/or use of uncompleted Documents and Materials without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, revise or assignment. Contractor may retain copies of such Documents and Materials for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any Documents and Materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

## 6.4 Confidentiality and Release of Information.

(a) All information gained or Work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or Work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the Work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or Work product in violation of this Agreement, then City shall have the

right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any Party regarding this Agreement and the Work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

### **7.1 California Law.**

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

### **7.2 Disputes; Default.**

In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any Work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Contractor's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

### **7.3 Retention of Funds.**

Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for

interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

#### 7.4 Waiver.

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any Work or Services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

#### 7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

#### 7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

#### 7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of Not Applicable (\$0.00) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of Services performed by the Contractor any accrued liquidated damages.

#### 7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice



of termination, Contractor shall immediately cease all Services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all Services rendered prior to the effective date of the notice of termination and for any Services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the Work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating Party need not provide the non-terminating Party with the opportunity to cure pursuant to Section 7.2.

#### 7.9 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the Work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the Services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

#### 7.10 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

### **ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

#### 8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

#### 8.2 Conflict of Interest.

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of Services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Contractor agrees to at all times avoid

conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

### 8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

### 8.4 Unauthorized Aliens.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of Work and/or Services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

## **ARTICLE 9. MISCELLANEOUS PROVISIONS**

### 9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication that either Party desires or is required to give to the other Party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

### 9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

### 9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

### 9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the Parties. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

### 9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

### 9.6 Corporate Authority.

The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

**[SIGNATURES ON FOLLOWING PAGE]**



**IN WITNESS WHEREOF** the Parties hereto have executed this contract the day and year first hereinabove written.

CITY OF BANNING

CONTRACTOR

\_\_\_\_\_  
Douglas Schulze,                      Date  
City Manager

By:

\_\_\_\_\_  
NAME:                                      DATE  
TITLE:

By:

\_\_\_\_\_  
NAME:                                      DATE  
TITLE:

ATTEST:

\_\_\_\_\_  
Daryl Betancur,                      Date  
Deputy City Clerk

\_\_\_\_\_  
Tax ID No.

CONTRACTOR'S ADDRESS:

APPROVED AS TO FORM:  
Richards, Watson & Gershon

\_\_\_\_\_  
Kevin G. Ennis, Esq.,                      Date  
City Attorney

**Two signatures are required if a corporation**

**NOTE: CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.**

# **CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On \_\_\_\_\_, 20\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

## **OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

<b>CAPACITY CLAIMED BY SIGNER</b>		<b>DESCRIPTION OF ATTACHED DOCUMENT</b>
<input type="checkbox"/>	INDIVIDUAL	_____
<input type="checkbox"/>	CORPORATE OFFICER	_____
	TITLE(S)	TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/>	PARTNER(S) <input type="checkbox"/> LIMITED	_____
	<input type="checkbox"/> GENERAL	
<input type="checkbox"/>	ATTORNEY-IN-FACT	_____
<input type="checkbox"/>	TRUSTEE(S)	NUMBER OF PAGES
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/>	OTHER _____	
<b>SIGNER IS REPRESENTING:</b>		DATE OF DOCUMENT
(NAME OF PERSON(S) OR ENTITY(IES))		
_____		
_____		
		SIGNER(S) OTHER THAN NAMED ABOVE

**EXHIBIT "A"**  
**SCOPE OF SERVICES**  
**(RFP No. 19-030 – Specifications and Scope of Services; pages 14 – 54)**

**EXHIBIT "A-1"**  
**VENDOR PROPOSAL**  
**(Pages 1-16 and pages 55-70 and Bid Forms)**

**EXHIBIT "B"**  
**SPECIAL REQUIREMENTS**  
**(Superseding Contract Boilerplate)**

**EXHIBIT "C"**  
**SCHEDULE OF COMPENSATION**

- I. Contractor shall perform the following tasks in accordance with Exhibit A-1.**
- II. To the extent a project proposal consists of multiple subtasks, within the budgeted amounts for each subtask, and with the approval of the Contract Officer, funds may be shifted from one subtask sub-budget to another so long as the project budget is not exceeded per Section 2.1, unless additional services are approved per Sections 1.10 and 2.3.**
- III. For each project assignment the City will compensate Contractor for the Services performed upon submission of a valid invoice. Each invoice is to include:**
  - A. Line items for all personnel describing the Work performed, the number of hours worked, and the hourly rate.**
  - B. Line items for all materials and equipment properly charged to the Services.**
  - C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.**
  - D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.**
- VI. The total compensation for Services shall not exceed \$63,150.00 as provided in Section 2.1 of this Agreement, unless additional services are approved per Sections 1.10 and 2.3.**



**EXHIBIT "D"**  
**SCHEDULE OF PERFORMANCE**

- I. The Contract Officer may approve extensions for performance of the Services in accordance with Section 3.5.
- II. All work product is subject to review and acceptance by the City, and must be revised by the Contractor without additional charge to the City until found satisfactory and accepted by City.

**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**



**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**PREPARED BY:** Heidi Meraz, Community Services Director

**MEETING DATE:** June 11, 2019

**SUBJECT:** Adopt Resolution, Approving the FY 2019/20 – 2021/22 Short Range Transit Plan Authorizing the Submittal of the FY 2019/20 Local Transportation Fund Claim

---

**RECOMMENDATION:**

That City Council adopt Resolution approving the FY 2019/20-2021/22 Short Range Transit Plan (SRTP) and authorizing the submittal of the 2019/20 Local Transportation Fund (LTF) claim in the amount of \$1,510,283.

**JUSTIFICATION:**

LTF dollars and fare box revenue cover the operational costs of the City's transit department, to include both the fixed route and dial-a-ride services. A claim form must be submitted annually to the Riverside County Transportation Commission (RCTC) before the funds will be released to the City. It is required that the SRTP be formally approved prior to the submittal of the claim document.

**BACKGROUND:**

The Short Range Transit Plan (SRTP), Exhibit "A", is prepared annually and provides a detailed description of services and operations along with statistics and projections to validate funding requests that will be submitted to RCTC that year. The revenues and expenses for the transit department for the city budget is based on the information provided within the 2019/20-2021/22 SRTP document.

**OPTIONS:**

1. Adopt Resolution authorizing the submittal of the FY 2019/20 Local Transportation Fund Claim in the amount of \$1,510,283.
2. Reject Resolution presented resulting in the annual Local Transit Fund Claim not being submitted and a loss of \$1,510,283 in operational assistance for Fixed-Route and Dial-A-Ride service in the City of Banning.

**ATTACHMENTS:**

1. Resolution No. 2019-\_\_\_\_\_
2. 2019/20-2021/22 SRTP

Approved by:

  
\_\_\_\_\_  
Douglas Schulze  
City Manager

***ATTACHMENT 1***  
***(Resolution No. 2019-\_\_\_\_)***

## RESOLUTION NO.2019-\_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE 2019/20-2020/21 SHORT RANGE TRANSIT PLAN (SRTP) AND AUTHORIZING THE SUBMITTAL OF THE FY 2019/20 LOCAL TRANSPORTATION FUND (LTF)**

**WHEREAS**, the City of Banning annually receives an allocation of Local Transportation Funds to operate the City's transit and dial-a-ride services; and

**WHEREAS**, the Short Range Transit Plan is prepared annually as justification for the LTF Funding request; and

**WHEREAS**, a claim form and standard assurances must be submitted to Riverside County Transportation Commission in order to receive the allocated LTF; and

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning as follows:

**SECTION 1.** That the City of Council of the City Banning hereby approves the 2019/20 Short Range Transit Plan document.

**SECTION 2.** The City Council of the City of Banning hereby authorizes the Community Services Director to execute and submit the Fiscal Year 2019/20 LTF Public Transit Claim in the amount of \$1,510,283 on behalf of the City of Banning.

**SECTION 3.** The City Clerk shall certify to the adoption of this Resolution and shall cause a certified resolution to be filed in the book of original resolutions.

**PASSED, APPROVED AND ADOPTED** this 11<sup>th</sup> day of June, 2019.

\_\_\_\_\_  
Arthur L. Welch, Mayor  
City of Banning

**ATTEST:**

\_\_\_\_\_  
Daryl Betancur, Deputy City Clerk  
City of Banning



**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

---

Kevin G. Ennis, City Attorney  
Richards, Watson & Gershon

[THIS SPACE INTENTIONALLY LEFT BLANK]

**CERTIFICATION:**

I, Daryl Betancur, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2019-\_\_\_\_\_ was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 11<sup>th</sup> day of June, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Daryl Betancur, Deputy City Clerk  
City of Banning, California

# ***ATTACHMENT 2*** ***(Banning SRTP)***



# **Short Range Transit Plan**

**FY 2019/20 – 2021/22**

**FY 2019/20 – 2021/22**



**Proud History  
Prosperous Tomorrow**

Banning Pass Transit

789 N. San Geronio Avenue

Banning, CA 92220

951.922.3243

FY 2019/20

# TABLE OF CONTENTS

## 1 System Overview

1.1	Description of service area and system map	3
1.2	Population Profile and Demographic Projections	4
1.3	Existing Service and Route Performance	6
1.4	Current and Proposed Fare Structure	6
1.5	Revenue Fleet	7
1.6	Existing Facility/Planned Facilities	7
1.7	Existing Coordination between Transit Agencies	8

## 2 Existing Services and Route Performance

2.1	Fixed Route Services	8
2.2	Dial-a-Ride Service	10
2.3	Key Performance Indicators	10
2.4	Productivity Improvement Efforts	11
2.5	Major Trip Generators and Projected Growth	12
2.6	Equipment, Passenger Amenities and Facility Needs	12

## 3 Planned Service Changes and Implementation

3.1	Recent Service Changes	13
3.2	Recommended Local & Express Routes	13
3.3	Marketing Plans and Promotions	13
3.4	Budget Impact on Proposed Changes	14

## 4 Financial and Capital Plans

4.1	Operating and Capital Budget Narrative	14
4.2	Funding Plans to Support Operating and Capital Program	15
4.3	Regulatory and Compliance Requirements	15
	• ADA, DBE, EEO, Title VI	
	• TDA Triennial Audit, FTA Triennial Audit, NTD	
	• Alternative Fueled Vehicles	



## 5 Tables

1. Table 1 - Fleet Inventory
  - a. Motor Bus (DO/PT)
  - b. Demand Response (DO/PT)

2. Table 2 - SRTP Service Summary
  - a. All Routes
  - b. Non-Excluded Routes
  - c. Excluded Routes
  - d. Fixed Route
  - e. DAR

3. Table 3 - SRTP Route Statistics

Table 3A - Individual Route

4. Table 4 - Summary of Funds Requested for FY 2019/20

Table 4A - Capital Project Justification

5. Table 5.1 - Summary of Funds Requested for FY 2019/20  
Table 5.1A - Capital Project Justification

Table 5.2 - Summary of Funds Requested in FY 2020/21  
Table 5.2A - Capital Project Justification

6. FY 2012 - 2015 TDA Triennial Performance Audit Recommendations

7. Table 7 - Performance Target Report 2018/19

8. Table 8 - Performance Report 2018/19

9. Table 9A - Highlights of FY 2019/20 Short Range Transit Plan  
Table 9B - Fare Revenue Calculation



## **1 System Overview**

### **1.1 – Description of Service Area**

The Banning Transit system serves several areas, including the commercial and residential areas of Banning and Cabazon, as well as the commercial areas of the Morongo Indian Reservation and limited commercial areas of Beaumont. Banning Transit services cover approximately 35 square miles in the pass area with routes connecting to regional services.

Within the service area, population is mixed with areas of both high and low densities. The current routes have been planned by taking advantage of this knowledge, allowing the system to operate more efficiently.

### **Service Area Map**



**SYSTEM ROUTE MAP TO BE INSERTED**

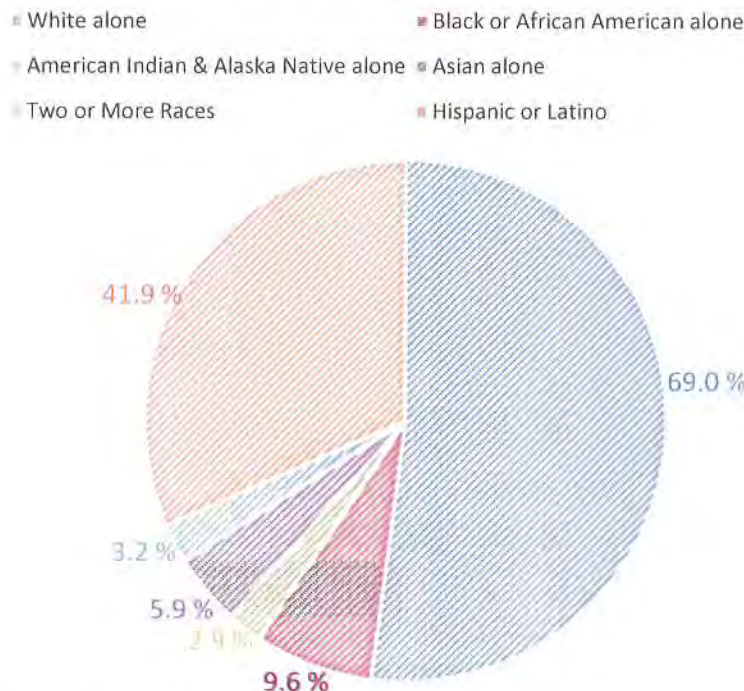
## 1.2 – Population Profile and Area Demographics

Riverside County covers 7,208 square miles with a population of over 2.4 million people in 2010, per the U.S. Census. The population density for Riverside County is 303.8 people per square mile, largely due to the vast desert areas that are not populated.

The city of Banning covers 23 square miles with a population of 30,940 people in 2018, per the Department of Finance E1: City/ County Population Estimates. The population density for Banning is 1,300 per square mile. The population of the service area covered by Banning Transit has grown by approximately 29% over the last ten years.

The racial makeup of the city is as follows:

### POPULATION ETHNICITY



The six percentages add to more than 100 percent because individuals may report more than one race

The average age of the population is the following:

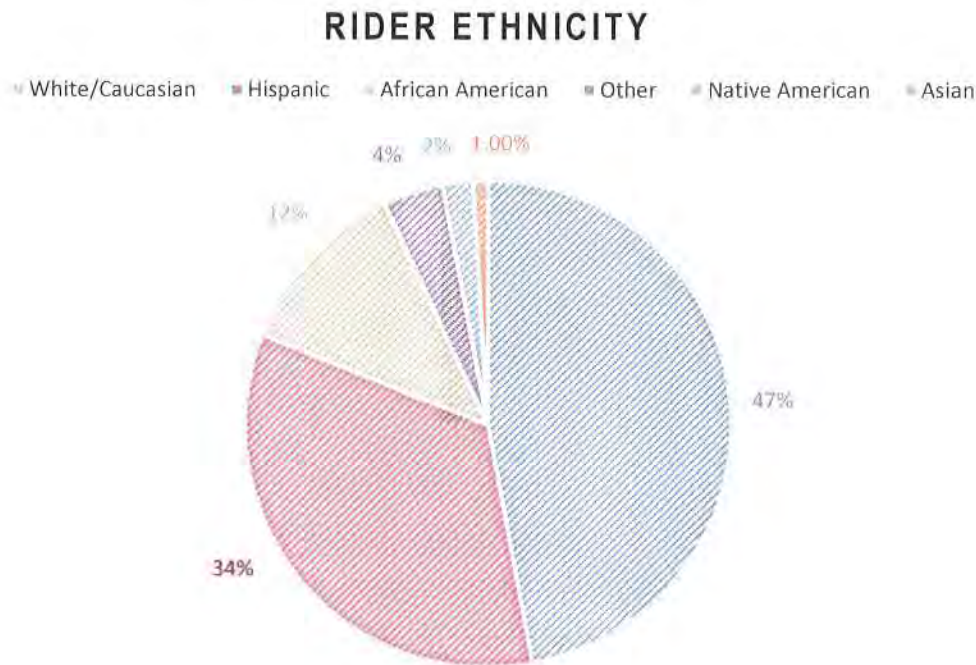
• 55+ Years	36.6 %
• 40-54 Years	15.5 %
• 20-39 Years	22.1 %
• Under 19 Years	25.8 %

The average age of the population is 45.1 years old.

### Rider Demographics

In 2013, a survey was conducted showing the demographics of the Pass Transit riders. The information gathered helped create a visual indication of the use of the system.

The racial makeup of the ridership is as follows:



Furthermore, 86% of respondents stated that they used the system's fixed routes at least three times a week. 59% of the ridership used the bus service for local trips within the Banning/Beaumont/Cabazon area, and 49% use the transit to travel outside of Pass Transit's service area. For 91% of ridership, the bus system is their only means of transportation. An unspecified amount of respondents stated that the transit service is readily available in their area, with a majority of riders living within a two-block radius of a bus stop.

A substantial amount users of the system share the commonality of being either underemployed or unemployed, with 88% of riders reporting an annual household income of \$20,000 or less and 81% of respondents reporting a family of two or more. 87% of those completing the survey report English as their primary language while 13% speak Spanish.



### 1.3 – Existing Service and Route Performance

The Banning Transit System currently has three fixed route services which serve the main streets and neighborhood areas of Banning, the residential and business areas of Cabazon, and the main business and shopping area of Beaumont.

Banning's fixed route buses are accessible to people with disabilities; each bus has a wheelchair lift or ramp along with two wheelchair securement locations. Banning offers individualized travel training to assist new passengers in learning how to ride these buses. Banning Paratransit is an origin-to-destination shared ride transportation service for seniors age 60 and older and persons who are, due to their functional limitation(s), unable to use accessible fixed route bus service. Passengers must be certified eligible per guidelines established by the Americans with Disabilities Act (ADA).

### 1.4 – Current and Proposed Fare Structure

The Pass Transit system has adopted a mutual service fare to make traveling more accessible to those who utilize the system. The chart below has a detailed breakdown of the current fares for available services:

#### Fixed Route

Fare Categories	Base Fare	Day Pass	10-Trip Punch Pass	10-Ticket Book	Monthly Pass
General	\$1.15	\$3.00	N/A	\$10.35	\$36.00
Youth (grades K-12)	\$1.00	\$3.00	\$10.00	N/A	\$25.00
Senior (60+)	\$.65	\$1.80	N/A	\$5.85	\$21.50
Disabled	\$.65	\$1.80	N/A	\$5.85	\$21.50
Military Veterans	\$.65	\$1.80	N/A	\$5.85	\$21.50
<i>Child (46" tall or under. Must be accompanied by full fare paying passenger.)</i>	\$.25	N/A	N/A	N/A	N/A
Zone Fare (Cabazon Residential Area)	\$.25	\$.25	\$.25	\$.25	N/A
Deviations (Routes 3 & 4)	\$.25	\$.25	\$.25	\$.25	\$.25
Active Military	FREE	N/A	N/A	N/A	N/A
GoPass (During school session only)	FREE	N/A	N/A	N/A	N/A

### Dial-A-Ride Fares

Fare Categories	Base Fare	10-Ride Punch Card
One-Way	\$2.00	\$18.00
Companion	\$3.00	N/A
PCA (w/ I.D.)*	FREE	FREE
No Show	\$2.00	N/A

\*Personal Care Attendant must show proper ID each time they board.

## 1.5 – Revenue Fleet

Banning Transit System operates seven fixed route vehicles all of which are powered by compressed natural gas (CNG). The vehicles are equipped with racks for two bicycles and are in compliance with the ADA with mobility device lifts and two tie-down stations per bus. The transit system has four vehicles that are classified as Dial-A-Ride (two in revenue service and one as a spare). The one remaining is utilized as an alternate for the fixed-route if needed. Banning Pass Transit also has four support vehicles which are used for driver relief or administrative errands.

Two 32' El Dorado National EZ Rider II buses are the most recent addition to the fleet, both having been delivered within the past 18 months. See the City of Banning Fleet Inventory Table 1 for individual vehicle characteristics.

## 1.6 – Existing Facility/Planned Facilities

The Banning Transit System functions as a department within the City and utilizes existing facilities. Customer Service aspects of the transit division are available at the at the City's Community Center located at 789 North San Gorgonio Avenue, where bus passes are sold, schedules are available, ADA applications can be picked up and returned, and phone calls for general information and questions regarding scheduling are received Monday – Friday from 8:00am to 6:00pm.

Administrative offices for the transit division, as well as the maintenance, parking, fueling of the buses, and storage of bus stop amenities, are located at the City's Corporation Yard located at 176 East Lincoln Street. Maintenance of the vehicles is performed by the Public Works Department, Fleet Maintenance Division. All dispatch and scheduling for paratransit services are handled at the Lincoln Street location as well.

There are currently no plans to expand Banning Pass Transit System facilities. Meanwhile, there are plans to rebuild the current CNG facility. This project is being done in cooperation with the Banning Unified District as the fueling station is used by both parties.



## **1.7 – Existing Coordination between Transit Agencies**

Currently, the cities of Banning and Beaumont operate under a Memorandum of Understanding (MOU) which allows for each respective agency to cross jurisdictional boundary lines, allowing simplified travel for passengers throughout the Pass area. In addition, an MOU is held with the Morongo Band of Mission Indians allowing stops on their property. The ability to provide a stop at Casino Morongo allows passengers to make connections with Sunline Commuter Link 220, providing service to and from Palm Desert and Riverside. Also, services are also coordinated with Riverside Transit Agency (RTA) by providing timed stops that meet with routes that provide travel to and from the areas of Hemet and Moreno Valley (i.e. Route 31 at either Sun Lakes or Walmart). Riders also have the opportunity to connect with the Amtrak Thruway Bus Service at Casino Morongo. Banning and Beaumont should evaluate the Strengths Challenges Opportunities and Threats of more comprehensive coordinated efforts and seriously evaluate modifying the MOU for current and future realities.

## **Existing Service and Route Performance**

### **2.1 – Fixed Route Service**

The Banning Transit System currently has three fixed route services which serve downtown and neighborhood areas of Banning, both the residential and business areas of Cabazon, and the main commercial area of Beaumont. The main service arterial is Ramsey, which between Beaumont's route 2 and Banning's route 1 split frequency, ridership and fare revenues. It would be prudent to evaluate the level of service through Ramsey, which is detrimentally impacting Banning's fare box recovery. It has been communicated by the City of Beaumont that in FY 2019 the Route 2 will no longer serve the Ramsey Street corridor and that a proposed Interagency Agreement will be presented to Banning for consideration. If, after changes to service is made, ridership volumes confirm that 30-minute frequency is prudent, then this municipality should be funded to operate those service levels. Transfers between Banning and Beaumont Transit systems could potentially be made at the Beaumont Walmart and San Geronio Memorial Hospital in Banning.

#### **Route 1 – Beaumont/Banning/Cabazon**

Pass Transit Route 1 is among the most used route in the system, operating along Ramsey Street and serving the commercial areas Beaumont, residential areas of Cabazon and Casino Morongo the outlet malls in Cabazon. Ridership on Route 1 accounts for approximately 60% of the total use of the system.

While the longest in distance, this route operates on one-hour headway from Beaumont to Casino Morongo. The major stops on this line include Albertsons, Wal-Mart, Banning City



Hall, Mid-County Justice Center, Social Services offices in Banning, San Geronio Memorial Hospital, Casino Morongo and the Desert Hills Outlets in Cabazon.

The second loop of Route 1 also runs on an hour headway departing from Casino Morongo and servicing the Cabazon Community Center and the residential areas of Cabazon. Two buses are operated on this route which allows for hourly service to the two respective areas.

### **Route 5 – Northern Banning**

Route 5 accounts for 25 percent of Pass Transit use, providing service to the areas that lie north of the I-10 Freeway in the City of Banning. Major stops on this route are the Mid-County Justice Center, Banning City Hall, the Banning Community Center, Library, Medical Facilities, San Geronio Memorial Hospital and the commercial area of Beaumont.

### **Route 6 – Southern Banning**

Accounting for 15% of Pass Transit use, Route 6 provides service to the southern area of Banning. Major stops on this route are the Mid-County Justice Center, Banning City Hall, the Mt. San Jacinto Pass Campus, Banning High School, Smith Correctional Facility, Medical Facilities, San Geronio Memorial Hospital and the commercial area of Beaumont.

#### **Banning Pass Transit fixed route service hours are as follows:**

<b>Days</b>	<b>Route</b>	<b>Hours</b>
Monday – Friday	Route 1	4:30 A.M. – 10:45 P.M.
Monday - Friday	Route 5	6:30 A.M. – 6:30 P.M.
Monday - Friday	Route 6	6:00 A.M. – 6:00 P.M.
Saturday & Sunday	Route 1	8:00 A.M. – 6:00 P.M.
Saturday & Sunday	Routes 5 & 6	8:00 A.M. – 5:00 P.M.

Banning Pass Transit offers limited service hours, 9:00 A.M. to 5:00 P.M., on the following holidays: Martin Luther King Day, President's Day, Labor Day, Veterans Day, and the day after Thanksgiving.

Banning Pass Transit offers no service on the following holidays: New Year's Day, Memorial Day, Independence Day, Thanksgiving Day, and Christmas Day.

**All aforementioned fixed routes are consistently monitored and will be modified as needed to better serve unmet transit needs.**

## 2.2 – Dial-A-Ride Service

Pass Transit Dial-A-Ride is a service offered to seniors, aged 60 and older, persons with disabilities and passengers eligible under the Americans with Disabilities Act (ADA). Limited service hours are available for non-ADA passengers. This category of passenger is also required to fill out a certification application to determine eligibility. If these terms are met, the applicant will receive a card certifying their eligibility to ride.

Pass Transit Dial-A-Ride is a service offered within the city limits of Banning and Beaumont as well as within a ¾ mile boundary of Routes 1 and 2 service areas (including Cabazon).

The primary uses for the Dial-A-Ride system are transportation to medical appointments, workshop programs for persons with disabilities, shopping areas, employment. Dial-a-Ride services also provide connections to the Riverside Transit Agency and Pass Transit Fixed Routes. Additionally, demand for paratransit is expected to grow. This is a universal transit/paratransit theme nationwide and Banning is anticipated to continue to see growth in the paratransit program. Furthermore, demand for Saturday and Sunday paratransit is expected to grow from somewhat inconsequential from a budget / demand standpoint to significant in the coming fiscal years.

**Hours for the Dial-A-Ride program are as follows:**

Days	Hours
<b>Seniors (age 60 &amp; older) &amp; Persons without ADA Certification</b>	
Monday - Friday	8:00 A.M. – 5:00 P.M.
Saturday & Sunday	No Service
<b>Persons with ADA Certification</b>	
Monday - Friday	7:00 A.M. – 7:00 P.M.
Saturday & Sunday	Limited service when three or more persons request service.

## 2.3 – Key Performance Indicators

The Riverside County Transportation Commission (RCTC) has adopted a Productivity Improvement Plan (PIP) for the transit and commuter rail operators of Riverside County. The PIP sets forth efficiency and effectiveness standards that the transit operators are to meet. Progress towards these standards is reported quarterly to the Commission. The



following table on the next page shows the operating performance indicators adopted in the PIP and this plan's projections for the coming year.

<b>Banning Transit System / Pass Transit Performance Statistics</b>	<b>FY 2014 Audited</b>	<b>FY 2015 Actual</b>	<b>FY 2016 Projected (Based on 3<sup>rd</sup> Quarter Actuals)</b>	<b>FY 2017 Planned</b>
Unlinked Passenger Trips	156,052	144,978	134,637	186,209
Operating Cost per Revenue Hours	\$92.31	\$77.75	\$70.00	\$78.17
Farebox Recovery Ratio	11.32%	11.27%	13.22%	11.56%
Subsidy per Passenger	\$8.19	\$9.45	\$7.22	\$7.99
Subsidy per Passenger Mile	\$3.22	\$3.70	\$3.56	\$2.24
Subsidy per Revenue Hour	\$81.86	\$68.99	\$59.69	\$69.13
Subsidy per Revenue Mile	\$3.57	\$2.82	\$1.60	\$4.61
Passengers per Revenue Mile	0.44	0.30	0.24	0.58

Projections are based on operating data through March 2019 and projected through June, 2019. Since these are only estimates, the performance indicators are subject to change.

For Fiscal Year 2019/2020, the Banning Transit System expects to be in compliance with greater than 4 of the 7 performance targets.

Additional details on key indicators for demand responsive and fixed route services are shown in Table 2.

The Banning Transit System does not receive any federal funding and is not required to report to the National Transit Database.

## 2.4 – Productivity Improvement Efforts

Planning for improvements in productivity will be addressed this upcoming fiscal year, as service in Banning will be changing as a result of proposed changes the City of Beaumont. Currently the City of Banning is awaiting a proposal for an interagency service agreement from the City of Beaumont which will identify specific changes to service and transfer points

between the two services. With the service changes will come additional service within the City of Banning, providing improved access and frequency to major stops.

## **2.5 – Major Trip Generators and Projected Growth over the next two years**

Major passenger trip destinations that the Banning Pass Transit services are the Sunlakes Plaza Shopping Center, the 2<sup>nd</sup> Street Marketplace and the Walmart Supercenter in Beaumont, the Banning Justice Center, San Geronio Pass Hospital, Beaver and Loma Linda Medical Plazas, the Cabazon Outlet Stores, Desert Hills Premium Outlets and Casino Morongo and the Mt. San Jacinto College Pass Campus. There is a high demand for service to these destinations whether for employment, necessities or pleasure. Looking into FY 2021, Banning will look to request funding for commuter service that will connect the Pass area with the desert communities Palm Springs. Staff will explore routing, service planning and the budget for service during FY 2020. Additionally, demand for paratransit is expected to grow. This is a universal transit/paratransit theme nationwide and Banning is anticipated to continue to see growth in the paratransit program.

## **2.6 – Equipment, Passenger Amenities and Facility Needs**

It is the City of Banning's goal to acquire, upgrade, and maintain equipment with the federal Transit Asset Management (TAMs) Business Model in mind to manage the nexus between State of Good Repair (SGR) and Safety Management System (SMS).

This year funds are being requested for the replacement of a hydraulic lift at the fleet maintenance shop, which is being added to FY 2017 funds. In addition, several 08/09 funding streams have been consolidated into one project along with additional FY 2018 STA capital funds to create a project which will address the lack of technological amenities in the system. This project will be implemented in three phases from FY 19 through FY 21. Ultimately, Banning will achieve the goal of automating much of the system with state of the industry technology. Features will include Computer Assisted Dispatching (CAD) / Automated Vehicle Location (AVL), Interactive Voice Response (IVR), Automated fare collection options, passenger amenities like "where is my bus," robust reporting, integration with TransTrack for service planning and more granular analysis, and other modules. This project is scalable and will be budgeted, funded and implemented in phases by design. It will be a perennial SRTP request to ensure State of the Industry technology is maintained and State of Good Repair is achieved.



### **3 Planned Service Changes and Implementation**

#### **3.1 – Recent Service Changes**

There are currently no significant planned service changes. As mentioned previously, in section 2.4, a change in service will be necessary upon an approval of a new interagency service agreement with the City of Beaumont

#### **3.2 – Recommend Local and Express Routes**

Banning will explore the possibility of requesting funding for a reverse commuter and desert link route in fiscal year 2012. In the coming fiscal year 2019, staff will review estimated demand, service planning, and budgeting for this route. At this point, it is hypothetical pending due diligence research and review, but could mature into a service recommendation and request depending on the outcome of the analysis.

#### **3.3 – Marketing Plans and Promotions**

Efforts have been made to market the Pass Transit System over the past year and will continue in the coming year. These efforts include purchasing advertising on a map of the San Gorgonio Pass Area, distribution of route maps by delivery to the library, Chamber of Commerce, San Gorgonio Memorial Hospital, Mt. San Jacinto Pass Campus, local hotels and other businesses.

The following marketing efforts will be undertaken to promote ridership growth.

1. Continue outreach programs to schools and at community events.
2. Attend senior community meetings to provide information.
3. Participation in the MSJC GO-PASS Program to encourage ridership of college students.
4. Articles in local papers highlighting new transportation routes.
5. Instill a Travel Navigation initiative in customer service.
6. Incorporate and coordinate travel training opportunities for Pass Passengers with regional providers including Sunline, RTA and Beaumont.
7. Offer "Rider Appreciation Day" to raise awareness of benefits of public transportation.
8. Continue to participate with Transportation Now, Senior Transportation Assistance Group, Pass Area Senior Connections, Pass Area Veterans Assistance, Cabazon Community Resources and other efforts.

9. Develop an advertising campaign that will promote Banning Pass Transit by increasing visibility and awareness of the services provided.

The City of Banning's website at [www.banningca.gov](http://www.banningca.gov) provides basic Pass Transit route and schedule information, as well as links to route information for neighboring agencies. Customers can submit comments, complaints, concerns and suggestions through the city website.

Banning Pass Transit strives to operate service in a manner that will maximize system productivity, efficiency, as well as the use of subsidies.

- Develop an ongoing planning process with key agencies and organizations within the region.
- Ensure that services are operated in a manner to maximize safety, to the riders, the public and the operators.
- Develop a core group of services that connect key activity points and commit to providing service along those corridors.
- Continually review all services to evaluate the efficiency and needs of the transit system.

### **3.4 – Budget Impact on Proposed Changes**

Banning transit farebox recovery and the anticipated budget is detrimentally impacted by Beaumont's continued hourly service through and the two cities are working together to develop a plan which will be mutually beneficial. It is anticipated that the changes that are to be presented in the forthcoming interagency service agreement with the City of Beaumont will allow Banning Pass Transit to meet mandatory farebox requirements.

## **4 FINANCIAL AND CAPITAL PLANS**

### **4.1 – Operating and Capital Budget**

For FY 19/10, operating funds needed to operate the Banning Pass Transit System are \$1,707,500 for the Fixed Route and DAR. The operating funds consist of \$ 1,689,916 in local transportation funds (LTF), projected farebox revenue of \$178,533, and additional funding in the amount of \$1,100 in interest income.

Staff will continue to complete previously funded Capital projects in FY 19/20 and will continue to operate service in a manner that will maximize system productivity and efficiency. The CNG Facility project will remain a high priority and will be completed before the end of FY20.



#### **4.2 – Funding Plans to Support Proposed Operating and Capital Program**

Capital projects are funded through STA funds, Public Transportation Modernization, Improvement, and Service Enhancement Account Program and Proposition 1B Security grants for Banning Pass Transit.

Operating costs will be fully funded through LTF funds, farebox revenue and interest.

#### **4.3 – Regulatory and Compliance Requirements**

The City of Banning submitted an Americans with Disabilities Act Paratransit Plan to the FTA on January 26, 1992. Pass Transit fixed route buses are equipped with ADA compliant mobility device lifts and are accessible to persons with disabilities. A procedure is in place to provide service to a customer in a mobility device should a fixed route bus lift fail.

Banning Pass Transit Dial-A-Ride services provide ADA complementary paratransit service for the fixed route services operated by Banning Transit System. Beaumont Transit System offers the same service through its Pass Transit Dial-a-Ride operation. The system uses a self-certification process with professional verification. Banning Transit System staff processes ADA certifications for Pass Transit operations.

##### Title VI

Banning Transit System/Pass Transit does not utilize federal funds for operating expenses. As such, Title VI requirements do not currently apply to the transit system.

##### Alternatively Fueled Vehicles (RCTC Policy)

Pass Transit fixed-route buses are CNG powered. Pass Transit Dial-A-Ride vehicles (which are less than 33,000 lbs. GVW and 15-passenger capacity), administrative and driver relief vehicles are gasoline-powered.

Future vehicle purchases will be in compliance with the RCTC and South Coast Air Quality Management District (AQMD) policies regarding alternative fuel transit vehicles.

The CNG Fueling Station at the City of Banning Corporation Yard provides CNG fueling for the transit fleet.



**Table 1 - Fleet Inventory**  
FY 2018/19 Short Range Transit Plan  
City of Banning

**Bus (Motorbus) / Directly Operated**

Year Built	Mfg. Code	Model Code	Seating Capacity	Lift and Ramp Equipped	Vehicle Length	Fuel Type Code	# of Active Vehicles FY 2017/18	# of Contingency Vehicles FY 2017/18	Life to Date Vehicle Miles Prior Year End FY 2016/17	Life to Date Vehicle Miles through March FY 2017/18	Average Lifetime Miles Per Active Vehicle As Of Year-To-Date (e.g., March) FY 2017/18
2015	EDN	AeroElite	30	2	32	CN	2	0	127,481	153,151	76,575
2017	EDN	Easy Rider	25	1	32	CN	1	0		19,804	19,804
2016	EDN	EZ Rider	25	1	32	CN	1	0	21,256	62,228	62,228
2004	EDN	Transmark	33	2	35	CN	2	0	909,001	945,458	472,729
2010	EDN	XHF	31	1	34	CN	1	0	586,181	616,135	616,135
<b>Totals:</b>			144	7			7	0	1,643,919	1,796,776	256,682



**Table 2 -- Banning-BUS -- SRTP Service Summary**  
FY 2018/19 Short Range Transit Plan  
All Routes

	FY 2015/16 Audited	FY 2016/17 Audited	FY 2017/18 Plan	FY 2017/18 3rd Qtr Actual	FY 2018/19 Plan
<b>Fleet Characteristics</b>					
Peak Hour Fleet			4	30	4
<b>Financial Data</b>					
Total Operating Expenses	\$1,019,464	\$1,367,219	\$1,080,000	\$1,151,532	\$1,393,957
Total Passenger Fare Revenue	\$327,666	\$133,705	\$181,875	\$75,997	\$177,680
Net Operating Expenses (Subsidies)	\$691,798	\$1,233,514	\$1,498,125	\$1,075,535	\$1,216,277
<b>Operating Characteristics</b>					
Unlinked Passenger Trips	127,524	122,265	186,000	91,155	185,400
Passenger Miles	316,260	303,217	364,959	226,064	1,074,700
Total Actual Vehicle Revenue Hours (a)	19,192.3	19,226.5	22,988.0	15,917.9	26,754.0
Total Actual Vehicle Revenue Miles (b)	738,641.3	748,502.0	813,016.0	588,739.6	797,964.0
Total Actual Vehicle Miles	745,524.5	755,010.0	820,502.0	593,676.5	810,146.0
<b>Performance Characteristics</b>					
Operating Cost per Revenue Hour	\$53.12	\$71.11	\$73.08	\$72.34	\$52.10
Farebox Recovery Ratio	22.52%	9.78%	10.92%	6.60%	12.74%
Subsidy per Passenger	\$6.99	\$10.09	\$8.05	\$11.80	\$6.56
Subsidy per Passenger Mile	\$2.82	\$4.07	\$4.10	\$4.76	\$1.13
Subsidy per Revenue Hour (a)	\$46.47	\$64.16	\$65.17	\$67.57	\$45.46
Subsidy per Revenue Mile (b)	\$1.23	\$1.65	\$1.84	\$1.83	\$1.52
Passenger per Revenue Hour (a)	6.6	6.4	8.1	5.7	6.9
Passenger per Revenue Mile (b)	0.17	0.16	0.23	0.15	0.23

(a) Train Hours for Rail Modes; (b) Car Miles for Rail Modes.



Table 3 - SRTP Route Statistics

City of Banning -- 1

FY 2019/20

All Routes

## Data Elements

Route #	Day Type	Peak Vehicles	Passengers	Passenger Miles	Revenue Hours	Total Hours	Revenue Miles	Total Miles	Operating Cost	Passenger Revenue	Net Subsidy
BAN-1	All Days	2	85,460	134,197	18,390.0	18,600.0	166,508.0	169,370.0	\$720,262	\$72,641	\$647,621
BAN-5	Weekday	1	44,500	122,375	3,380.0	3,770.0	66,465.0	72,960.0	\$351,235	\$37,825	\$313,410
BAN-5/6	Saturday	1	5,860	2,340	468.0	540.0	5,600.0	5,758.0	\$42,485	\$4,981	\$37,504
BAN-5/6	Sunday	1	5,860	2,340	468.0	540.0	5,600.0	5,758.0	\$42,485	\$4,981	\$37,504
BAN-6	Weekday	1	42,500	106,250	3,380.0	3,770.0	65,442.0	68,900.0	\$342,265	\$36,125	\$306,140
BAN-DAR	Weekday	2	12,550	62,750	2,385.0	2,860.0	34,390.0	51,252.0	\$190,104	\$22,000	\$168,104
Service Provider Totals		8	196,730	630,252	28,473.0	30,080.0	344,005.0	374,006.0	\$1,688,836	\$178,553	\$1,510,283



Table 3 - SRTP Route Statistics

City of Banning -- 1

FY 2019/20

All Routes

## Performance Indicators

Route #	Day Type	Operating Cost Per Revenue Hour	Operating Cost Per Revenue Mile	Cost Per Passenger	Farebox Recovery Ratio	Subsidy Per Passenger	Subsidy Per Passenger Mile	Subsidy Per Revenue Hour	Subsidy Per Revenue Mile	Passengers Per Hour	Passengers Per Mile
BAN-1	All Days	\$39.17	\$4.33	\$8.43	10.08%	\$7.58	\$1.94	\$35.22	\$3.89	4.6	0.51
BAN-5	Weekday	\$103.92	\$5.28	\$7.89	10.76%	\$7.94	\$2.56	\$92.72	\$4.72	13.2	0.67
BAN-5/6	Saturday	\$90.78	\$7.59	\$7.25	11.72%	\$6.40	\$16.03	\$80.14	\$6.70	12.5	1.05
BAN-5/6	Sunday	\$90.78	\$7.59	\$7.25	11.72%	\$6.40	\$16.03	\$80.14	\$6.70	12.5	1.05
BAN-6	Weekday	\$101.26	\$5.23	\$8.05	10.55%	\$7.20	\$2.88	\$90.57	\$4.68	12.6	0.65
BAN-DAR	Weekday	\$79.71	\$5.53	\$15.15	11.57%	\$13.39	\$2.68	\$70.48	\$4.89	5.3	0.36
Service Provider Totals		\$59.32	\$4.93	\$8.58	10.57%	\$7.68	\$2.40	\$53.05	\$4.39	6.9	0.57



**TABLE 3A – Individual Route Statistics**

<b>Fixed Route</b>	<b>Description</b>	<b>Area/Service Site</b>
<b>Route 1</b>	Service from Beaumont to Cabazon via downtown Banning	Walmart Shopping Center, Albertsons, San Geronio Memorial Hospital, Downtown Banning, Banning Justice Center, Casino Morongo, Desert Hills Outlet, Cabazon Community Center and residential areas of Cabazon
<b>Route 6</b>	Residential areas of Northern Banning, Indian School, Alessandro, Nicolet and Wilson Street to Walmart Shopping Center in Beaumont via downtown Banning	Banning Justice Center, City Hall, Community Center, Library, San Geronio Hospital, Medical and Dental Facilities, shopping areas and restaurants at Highland springs
<b>Route 6</b>	Residential areas of Southern Banning, Hathaway and Williams Street to Walmart Shopping Center in Beaumont via downtown Banning	Mt San Jacinto College Pass Campus, Banning High School, Smith Correctional Facility, Banning Justice Center, Medical and Dental facilities and shopping areas and restaurants at Highland Springs
<b>Dial-A-Ride</b>	<b>Description</b>	<b>Area/Service Site</b>
<b>City-Wide</b>	Demand response/reservation based service for seniors and disabled	All areas of Banning and limited areas in Beaumont

Table 4 - Summary of Funds Requested for FY 2019/20

Project Description	Capital Project Number	Total Amount of Funds	LTF	STA	State of Good Repair	LCTOP*	Fare Box	Other (2)	
FY 18/20 Operating Assistance		\$1,589,916	\$1,510,283				\$178,533	\$1,100	10.62970%
<b>Subtotal: Operating</b>		\$1,589,916	\$1,510,283	\$0	\$0		\$178,533	\$1,100	
Heavy Duty Hydraulic Lift	20-01			\$75,000					
CNG Facility	20-02			\$325,000					
State of Good Repair (FY 18/19)					\$37,740				
<b>Subtotal: Capital</b>		\$437,740		\$400,000	\$37,740		\$0	\$0	
<b>Total: Operating &amp; Capital</b>		\$2,127,656	\$1,510,283	\$400,000	\$37,740		\$178,533	\$1,100	

Note: Other (2) is from Interest Income  
LCTOP (FY 18/19)

### **Table 4A – Capital Project Justification**

**PROJECT NUMBER** (If existing project in FTIP, indicate FTIP ID number)

SRTP Project No 10-01:

FTIP No:

**PROJECT NAME:** Heavy Duty Hydraulic Lift

**PROJECT DESCRIPTION:** (For Bus Purchase projects, indicate fuel type)

This request for \$75,000 will be combined with previously authorized funds and will contribute toward the acquisition and installation of a Heavy Duty Hydraulic Lift for the Fleet Maintenance Facility.

**PROJECT JUSTIFICATION:**

This project will enhance the capacity of the Fleet Maintenance Division and enable significantly more onsite repairs. This will reduce the cost of subcontracting out repairs that cannot be completed currently due to the lack of this essential piece of equipment.

**PROJECT SCHEDULE** (if existing project in FTIP, indicate original start date and new completion date):

Specs drawn: September 20120

Order: December 2020

Delivery and Installation: February 2021

**PROJECT FUNDING SOURCES (REQUESTED):**

STA Funds \$75,000

**PRIOR YEAR PROJECTS OF A SIMILAR NATURE WITH UNEXPENDED BALANCE INCLUDING PROJECTS APPROVED BUT NOT YET ORDERED (INCLUDE FTA GRANT #, FTIP ID # AND RCTC'S SRTP CAPITAL GRANT #)**

<i>FTA Grant #</i>	<i>FTIP ID #</i>	<i>RCTC/SRTP Project #</i>	<i>Description</i>	<i>Unexpended balance (as of 6/30/17)</i>
		20-01	Heavy Duty Hydraulic Lift	75,000
<b><i>TOTAL</i></b>				<b><i>75,000</i></b>

**Table 4A – Capital Project Justification**

**PROJECT NUMBER** (If existing project in FTIP, indicate FTIP ID number)

SRTP Project No: 20-02

FTIP No:

**PROJECT NAME:** CNG Facility

**PROJECT DESCRIPTION:** (For Bus Purchase projects, indicate fuel type)

This request for \$375,000 will be combined with previously authorized funds and will contribute toward the rehabilitation of the current CNG fueling station.

**PROJECT JUSTIFICATION:**

**PROJECT SCHEDULE** (if existing project in FTIP, indicate original start date and new completion date):

Specs drawn: September 2019

Order: December 2020

Delivery and Installation: February 2021



**PROJECT FUNDING SOURCES (REQUESTED):**

STA Funds \$375,000

**PRIOR YEAR PROJECTS OF A SIMILAR NATURE WITH UNEXPENDED  
BALANCE INCLUDING PROJECTS APPROVED BUT NOT YET ORDERED  
(INCLUDE FTA GRANT #, FTIP ID # AND RCTC'S SRTP CAPITAL GRANT #)**

<i>FTA Grant #</i>	<i>FTIP ID #</i>	<i>RCTC/SRTP Project #</i>	<i>Description</i>	<i>Unexpended balance  (as of 6/30/17)</i>
		20-02	Heavy Duty Hydraulic Lift	375,000
<b><i>TOTAL</i></b>				<b><i>375,000</i></b>

**TABLE 6 – PROGRESS TO IMPLEMENT TRIENNIAL PERFORMANCE AUDIT**

<b>Audit Recommendations (Covering FY 2012/13 – FY 2014/15)</b>	<b>Action(s) Taken And Results</b>
1.	
2.	
3.	



Table 7 -- Service Provider Performance Targets Report

FY 2018/19 Short Range Transit Plan Review  
City of Banning

Data Elements	FY 2018/19 Plan	FY 2018/19 Target	FY 2018/19 Year to Date Through 3rd Quarter	Year to Date Performance Scorecard
Unlinked Passenger Trips	197,950			
Passenger Miles	1,123,444			
Total Actual Vehicle Revenue Hours	28,618.0			
Total Actual Vehicle Revenue Miles	830,174.0			
Total Actual Vehicle Miles	844,811.0			
Total Operating Expenses	\$1,653,957			
Total Passenger Fare Revenue	\$200,720			
Net Operating Expenses	\$1,453,237			
<b>Performance Indicators</b>				
<b>Mandatory:</b>				
1. Farebox Recovery Ratio	12.13%	$\geq 10.00\%$	9.97%	Fails to Meet Target
<b>Discretionary:</b>				
3. Operating Cost Per Revenue Hour	\$57.79	$\leq \$42.01$	\$61.72	Fails to Meet Target
2. Subsidy Per Passenger	\$7.34	$\geq \$7.10$ and $\leq \$9.60$	\$5.89	Meets Target
3. Subsidy Per Passenger Mile	\$1.29	$\geq \$2.76$ and $\leq \$3.74$	\$1.67	Better Than Target
4. Subsidy Per Hour	\$50.78	$\geq \$42.41$ and $\leq \$57.37$	\$56.18	Meets Target
5. Subsidy Per Mile	\$1.75	$\geq \$2.16$ and $\leq \$1.58$	\$1.37	Meets Target
6. Passengers Per Revenue Hour	6.90	$\geq 5.10$ and $\leq 6.90$	6.30	Meets Target
7. Passengers Per Revenue Mile	0.24	$\geq 0.14$ and $\leq 0.18$	0.15	Meets Target

Note: Must meet at least 4 out of 7 Discretionary Performance Indicators



FY 2019/20 - Table 8 -- SRTP Performance Report

Service Provider: City of Banning  
All Routes

Performance Indicators	FY 2017/18 End of Year Actual	FY 2018/19 4th Quarter Year-to-Date	FY 2019/20 Plan	FY 2019/20 Target	Plan Performance Scorecard (a)
Passengers	126,793	79,791	196,730	None	
Passenger Miles	326,390	424,475	630,252	None	
Revenue Hours	22,018.4	12,630.2	28,471.0	None	
Total Hours	23,226.7	14,257.8	30,080.0	None	
Revenue Miles	798,183.0	516,535.3	344,005.0	None	
Total Miles	808,419.9	523,896.9	374,006.0	None	
Operating Costs	\$3,537,899	\$779,501	\$1,688,836	None	
Passenger Revenue	\$112,866	\$69,945	\$178,553	None	
Operating Subsidy	\$3,424,983	\$709,556	\$1,510,283	None	
Operating Costs Per Revenue Hour	\$69.84	\$61.72	\$59.32	$\leq \$57.03$	Fails to Meet Target
Operating Cost Per Revenue Mile	\$1.93	\$1.51	\$4.91	None	
Operating Costs Per Passenger	\$32.13	\$9.77	\$8.58	None	
Farebox Recovery Ratio	7.34%	8.97%	10.57%	$\geq 10.0\%$	Meets Target
Subsidy Per Passenger	\$11.24	\$8.89	\$7.68	$\geq \$7.18$ and $\leq \$9.72$	Meets Target
Subsidy Per Passenger Mile	\$4.37	\$1.67	\$2.40	$\geq \$1.35$ and $\leq \$1.83$	Better Than Target
Subsidy Per Revenue Hour	\$64.72	\$56.18	\$53.05	$\geq \$41.78$ and $\leq \$56.52$	Meets Target
Subsidy Per Revenue Mile	\$1.79	\$1.37	\$4.39	$\geq \$0.95$ and $\leq \$1.29$	Better Than Target
Passengers Per Revenue Hour	5.80	6.30	6.90	$\geq 4.93$ and $\leq 6.67$	Better Than Target
Passengers Per Revenue Mile	0.16	0.15	0.57	$\geq 0.11$ and $\leq 0.15$	Better Than Target

a) The Plan Performance Scorecard column is the result of comparing the FY 2019/20 Plan to the FY 2019/20 Primary Target.



**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**



**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**PREPARED BY:** Tom Miller, Electric Utility Director

**MEETING DATE:** June 11, 2019

**SUBJECT:** Banning Electric Utility (BEU) Mapping Pilot Project as approved in the mid-year budget resolution.

---

**RECOMMENDED ACTION:**

Staff recommends discussion and possible action authorizing a pilot mapping project for BEU as follows:

- Approving City Council Resolution, Authorizing the electric utility director to complete the necessary tasks to implement a pilot mapping project that includes:
  - Entering into a professional services agreement to Acculine Engineering in the amount of \$24,345; and,
  - Entering into a purchase contract to Partner Software in the amount of \$80,500; and,
  - Entering into a purchase contract to Reavis Code Utility Solutions in the amount of \$25,500, and,
  - Authorizing a contingency of \$29,155 for additional proprietary software and or hardware needs.
- Authorizing the city manager or his designees to execute the respective agreements, contracts, software licenses, or any other specific documentation necessary and related to the pilot mapping project for BEU.

**GOAL STATEMENT:**

To improve BEU's data base management, workflow processes, reporting productivity, asset management, system design, reliability for continuity of service, and to enhance BEU's participation in the Southern California Joint Pole Committee.

**COMMITTEE RECOMMENDATION:**

On April 16, 2019, BEU staff took the Mapping Pilot Project before the Budget and Finance Committee to demonstrate the critical need to move forward with this project. BEU staff received full support and recommendation to move forward with the pilot project with understanding that a full project would be on the horizon. Recommendation was given to proceed without the need to consult council but the City's purchasing policy requires a specific council resolution.

**BACKGROUND:**

BEU has been operating without a modern and efficient mapping system for many years. Due to staff downsizing in 2009, the position assigned to keep maps and GIS locations updated for the utility was vacated. With the lack of resources and clear direction, the utility's field inventory system became deficient. It is necessary to retain appropriate and reliable data management, meet reporting obligations with accuracy, and maintain asset control. With the implementation of AMR and AMI features, it is logical and practical to integrate metering information directly into mapping and field inventory system. Also, BEU can optimize reimbursements generated from being a member of the Southern California Joint Pole Committee (SCJPC). This membership requires accurate inventory and documentation of assets in the mapping system as well as records of any and all changes to be processed in a timely manner. Without an effective mapping system in place, the utility has not yet realized the full reimbursement benefits of the SCJPC membership.

**JUSTIFICATION:**

Milsoft WindMil (software) is the electrical engineering circuit model of record. The model was built by R. W. Beck and later updated by LEIDOS around 2007 because BEU did not own the software. In order to better manage our electrical distribution system, we bought the WindMil software. BEU staff have identified the proven integration systems to use with our current circuitry model. Implementation of the Partner's software will enable the BEU to realize the full benefit of WindMil circuit model. The consultants with Acculine built the software integration between WindMil, Partner, and Reavis Code solutions.

**FISCAL IMPACT:**

The cost of the pilot mapping project was already approved in the 2019 Mid-Year Budget adjustments at an estimate cost of \$159,500. The cost of the full project (not just pilot program) will be in the 2020 Mid-Cycle Budget.

**ALTERNATIVES:**

1. Approve as recommended.
2. Approve with modifications.



3. Provide alternative directions.
4. Do not approve.

**ATTACHMENTS:**

1. Resolution No. 2019-\_\_\_\_\_
2. Acculine Professional Services Agreement
3. Partner Software quotation
4. Reavis Code Utility Solutions quotation
5. Budget and Finance Committee presentation

Approved by:



Douglas Schulze  
City Manager

**ATTACHMENT 1**  
**(Resolution No. 2019-\_\_\_\_)**

## RESOLUTION 2019-\_\_\_\_

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,  
CALIFORNIA, AUTHORIZING BANNING ELECTRIC UTILITY TO  
COMPLETE A PILOT MAPPING PROJECT.**

**WHEREAS**, the City of Banning is a general law municipality governed by elected city council members; and

**WHEREAS**, City of Banning owns and operates a retail electrical energy distribution system which serves load to end-use costumers in an assigned area of service; and

**WHEREAS**, it is the goal of BEU to improve the utility's data base management, process workflow, reporting productivity, asset management, system design, and reliability for continuity of service, and to enhance participation in the Southern California Joint Pole Committee; and

**WHEREAS**, BEU has been operating without a modern and efficient mapping system for many years; and

**WHEREAS**, BEU staff have identified the proven integration systems to use with our current electrical circuitry model and presented to and the City's Budget and Finance Committee recommended to proceed with the pilot mapping project.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning, California, declares, determines, and orders as follows:

**SECTION 1.** Adopt Resolution, authorizing the electric utility director to conduct a mapping pilot project which includes entering into a professional services agreement to Acculine Engineering in the amount of \$24,345, entering into a purchase contract to Partner Software in the amount of \$80,500, entering into a purchase contract to Reavis Code Utility Solutions in the amount of \$25,500, and consenting to a contingency of \$29,155 for additional proprietary software and or hardware needs.

**SECTION 2.** The city manager or electric utility director is authorized to execute the professional services agreement with Acculine Engineering along with the software licensing documents and purchasing documents required to complete the mapping pilot project, not to exceed \$159,500.

**SECTION 3.** The City Clerk shall certify to the adoption of this Resolution and shall cause a certified resolution to be filed in the book or original resolutions.

**PASSED, APPROVED, AND ADOPTED** this 11<sup>th</sup> day of June, 2019.

\_\_\_\_\_  
Arthur L. Welch, Mayor  
City of Banning

**ATTEST:**

\_\_\_\_\_  
Daryl Betancur, Deputy City Clerk  
City of Banning

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

\_\_\_\_\_  
Kevin G. Ennis, City Attorney  
Richards, Watson & Gershon

**CERTIFICATION**

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2019-\_\_\_\_\_ was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 11<sup>th</sup> day of June 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Daryl Betancur, Deputy City Clerk  
City of Banning, California

# **ATTACHMENT 2**

## **(Acculine Professional Services Agreement)**



# GPS Field Inventory Pilot Project

Option2: 8 days collection, Dave  
2 days consulting, Jody

Presented to:

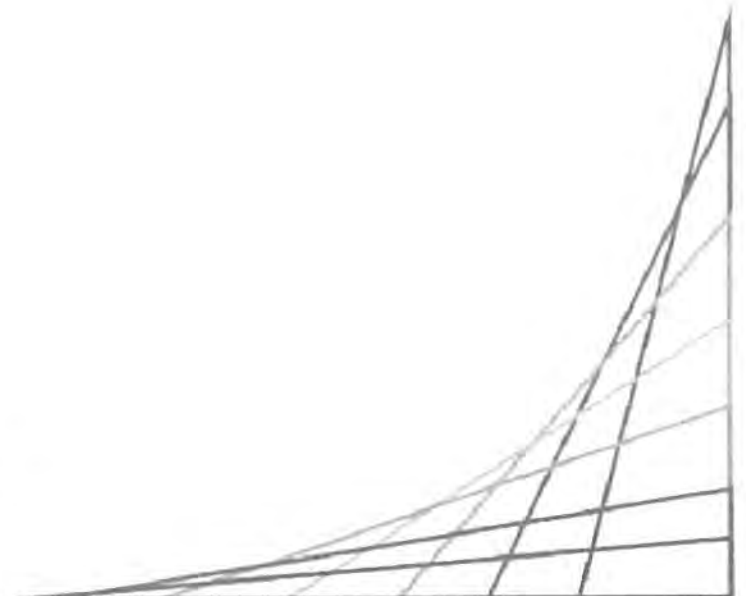
Mr. Roger Halverson  
Banning Electric Utility (CBME)

Electrical Engineering Manager

176 East Lincoln Street,  
Banning, CA., 92220

January 18, 2019

**Acculine**  
Consulting



# Contact Information

Acculine Consulting LLC  
7333 Cattle Drive  
Nashport, OH 43830

Jody Wheeler  
Email: [jwheeler@acculineconsulting.com](mailto:jwheeler@acculineconsulting.com)  
Mobile: 678.772.6846

Dave Grayson  
Email: [dgrayson@acculineconsulting.com](mailto:dgrayson@acculineconsulting.com)  
Mobile: 614.330.2550

# Executive Summary

Acculine's owners, Jody Wheeler and Dave Grayson, will be collecting and reviewing the locations on the Banning pilot project circuit.

We will begin with a field inventory on a circuit of your choosing. Once a sufficient amount of the facilities inventory is complete, we will stop and allow you the opportunity to review and make any needed adjustments. After the facilities inventory, we will complete the final work in Partner and prepare to post to the Milsoft map. The map posting will be as seamless as possible so as not to disrupt your map usage more than necessary.

Acculine will inventory approximately 1,550 location over the 2 trips to your system but the number collected will vary depending on how much time is allocated to training and consulting vs field collecting. The 1<sup>st</sup> trip will consist primarily of field collection. The second trip will primarily be review of the posted locations, the new software and assistance with the board meeting review. The 2 trips and all of the consulting training work will take approximately 4 weeks.

The cost is projected to be \$24,345 for the pilot inventory project and advisory consulting for the 2 separate trips.

The work will flow through your Partner Field Design software. All locations will be posted to the map using your Milsoft software via remote connection.

# Resources

**Jody Wheeler, P.E.** is co-owner of Acculine Consulting LLC. He began in the electrical industry by designing High Voltage Transmission Lines with LineSoft in 2000. He has since worked with Itron, where he became familiar with performing Joint Use NESC Compliance audits. Power Delivery Associates is where he gained experience with Origin GeoSystems, ESRI, Partner Software and field staking. Among many accomplishments, he became a certified Professional Engineer and was an assistant trainer in PDA's Line Design and Staking certification program. In 2007, Jody teamed up with Dave Grayson to work with Hawkeye REC using Partner Software and Tri-Global's MobileStaker to design replacement lines, for nearly (1/3) of Hawkeye REC's power lines, in the aftermath of an ice storm. They worked closely with Hawkeye staff for seven years to transform Hawkeye's basic staking system setup into one of Partner's showcase systems. With Acculine, Jody has staked hundreds of miles of line, GPS inventoried tens of thousands of locations, and consulted with over 20 electric cooperatives to provide assistance and training with GIS and Partner systems. His real-world experience gives him the knowledge to produce on the highest level in the industry.

**Dave Grayson** is co-owner of Acculine Consulting. He worked as a field technician for LineSoft while completing a B.S. of Industrial Engineering from The Ohio State University. While there he performed structural analysis and clearance analysis of over 10,000 poles working as a technician. Later, as an Engineer for Itron, he performed work order and material list preparations, crew scheduling, developed extensive conductor sag tables and data base customization. He was a lead trainer for the analysis software and was on the development team for the analysis software. As a project manager Dave started 3rd party compliance audit projects at South Central Power in Ohio, Detroit Edison in Michigan, Bristol Virginia Utilities in Virginia and Tampa Electric in Florida. He managed several multi-million-dollar projects, developed standards, procedures, trained technicians, supervised scheduling, coordinated work flow, reviewed and assured quality control and headed client meetings. Dave has also attended and presented at industry trade shows. His teamwork with Jody Wheeler has resulted in broad experience with staking, Partner's Field Designer and Tri-Global's MobileStaker. With Acculine Dave has staked hundreds of miles of line and GPS inventoried tens of thousands of locations.

# Objectives

## Priority 1 Field Collection

### Goals:

- Collect some sample locations in the field with a head staker or engineer so we can work out the details of what you want or don't want.
- Do a little driving around the system with the same people and look for situations that bring up more questions about how to do the inventory.
- Discuss assemblies and specs. How it can be arranged for good work flow.
- Collect as much of the pilot circuit as possible.

### Timeline:

- Week 1 and 2 (1<sup>st</sup> trip)
- Begin no earlier than week of February 25<sup>th</sup>
- This would take approximately 2 weeks

## Priority 2 Review and Post Inventoried Locations to the Map

### Goals:

- Provide assistance in conveying the usefulness of an inventory and how the software relates

### Timeline:

- Week 3 (remotely from home office)
- This would take place between the 1<sup>st</sup> and 2<sup>nd</sup> trip.
- This would take approximately 1 week.

## Priority 3 Go Over the New Software

### Goals:

- Show the field staking tool to your staking department.
- Show the Partner Staker platform
- Show the MilSoft map and discuss its many uses.
- Discuss your current processes and recommend efficient uses of the new software.

### Timeline:

- Week 4 (2<sup>nd</sup> trip)
- Most of this will be handled on the second trip. (no earlier than week of March 18<sup>th</sup>)

## Priority 4 Assist in Showcasing the Map to the Board

### Goals:

- Provide assistance in conveying the usefulness of an inventory and how the software relates

### Timeline:

- Week 4 (2<sup>nd</sup> trip)
- This will be handled during the second trip (scheduled to coincide with a board meeting)

# Details

Acculine personnel will collect a GPS location per facility as itemized below:

Inventory will likely include: (Pilot projects are a discovery process)

- GPS point of poles, meters and above grade equipment of UG facilities
- Second location collected for offset point for underbuilt spans
- Service location tag number collected and used to preserve existing data for Consumers
- Pole Height where available (estimated where not available)
- Equipment location numbers for fuses, reclosers and boxes etc.
- Record assembly units applicable at each location
- Fuse size collected where available
- Recloser size type and curve where available
- Transformer sizes, type and framing verified where available (estimated where not available)
- UG transformer kVA and voltage where available
  - 2 units, 1 for pad and 1 for vault
  - Assume a UM6.6 ground
- Primary junction boxes
  - 1 unit that includes vault and box and lid
  - Assume a UM6.6 ground
- guys
- anchors
- grounds
- lights, MV/HPS/LED
- Wire sizes using splice color coding, CBME's standard sizes, map data or visual estimation
- Major safety issues will be passed on to CBME via text, phone call or e-mail



# Project Cost

## Labor Rates

On Site Labor Jody	daily rate \$2,000	days, 2	\$ 4,000
Office Labor Jody	daily rate \$1,000	days, 1	\$ 1,000
On Site Labor Dave	daily rate \$1,750	days, 8	\$ 14,000
Office Labor Dave	daily rate \$800	days, 3	\$ 2,400

## Expenses

Airfare Jody	rate \$500	flights, 1	\$ 500
Airfare Dave	rate \$550	flights, 1	\$ 550
Rental car	daily rate \$40	days, 13	\$ 520
Lodging	daily rate \$125	days, 11	\$ 1,375

Total      \$ 24,345

# Billing

Acculine will invoice Banning for the pilot project upon completion.

Invoices due upon receipt.

# About Acculine

Acculine has approached utility services in somewhat of a unique way. We have formulated a business plan to minimize overhead and the need for multiple layers of skill sets simply by putting together two highly experienced and trained individuals that can respond to any aspect of the project. We can change gears, respond to issues and give you the assurance that the end result is not only useful but very beneficial for CBME and its employees. We also handle the marketing and management but we primarily focus on doing the hands-on work personally.

Acculine began its operation in 2007, as a Consulting and Field Service Provider. Our work experience has been in staking services, GPS inventorying, electronic mapping, configuration services and staker training. Jody and Dave have experience prior to Acculine with transmission and distribution line design, Utility Technology Assessments, NESC Joint-Use Pole Attachment Compliance Audits, GPS Inventory and Map Population Services with many clients throughout the United States. Acculine is one of the nation's foremost consulting firms certified by Partner Software to install, configure and train on the Partner Platform, the Field Design System especially, and now, the Field Inspection System. Acculine is also a Milsoft certified mapping system trainer. Acculine's talented personnel have many years of experience with the software and service companies providing Electric Utility services. This gives us the confidence that Acculine will provide you with the highest quality services and finished products available on the market today. We are proud of our work done in the electric delivery industry and look forward to another new relationship with Banning Municipal Electric.

# References

## Past and Current Clients and Business Partners

### miEnergy, Cresco, IA

- Partner and GIS Training and Consulting
- 30,000 GPS points inventoried
- 800+ miles of Staking line rebuilds using Mobile Staker and Partner Software
- Contact:  
Mike Walton  
Engineering & Operations Manager  
(563) 547-3801  
[mwalton@hawkeyerec.com](mailto:mwalton@hawkeyerec.com)

### Southeastern Indiana REMC, Osgood, IN

- Partner and GIS Training and Consulting
- 86,500 GPS points inventoried
- Contact:  
Mike Summers  
Director of Engineering and Design  
(812) 689-4111  
[mike.summers@seiremc.com](mailto:mike.summers@seiremc.com)

### Steele-Waseca Cooperative Electric, Owatonna, MN

- Partner and GIS Training and Consulting
- 18,300 GPS points inventoried
- Contact:  
Mr. Kim M. Huxford  
Operations Division Manager  
(507) 451-7340  
[khuxford@swce.coop](mailto:khuxford@swce.coop)

# References

## Past and Current Clients and Business Partners

### ReavisCode, Athens, GA

- Certified Partner Trainer, Tester and Consultant
- Configuration and training with Partner Software since 2005
- Contact:  
Paul Reavis  
President  
762.499.0834  
[paul@reaviscode.com](mailto:paul@reaviscode.com)

### Milsoft Utility Solutions, Inc.

- Certified WindmilMap Trainer
- Configuring and Training WindmilMap Customers since 2010
- Contact:  
Jeff Kirkes  
Vice President of Support  
800.344.5647  
[jeff.kirkes@milsoft.com](mailto:jeff.kirkes@milsoft.com)

# **ATTACHMENT 3**

## **(Partner Software Quotation)**



## City of Banning (CA)

Software and Services	
<b>Platform:</b> Mapping Platform	\$20,000
***Installation and Services Fee	\$4,000
<b>Module:</b> Field Design	\$30,000
***Installation and Services Fee	\$14,000
<b>Up-Front Total</b>	<b>\$68,000</b>

Annual Maintenance (Year 1)	
<b>Platform:</b> Mapping Platform	\$5,000
<b>Application:</b> Field Design	\$7,500
<b>Annual Total</b>	<b>\$12,500</b>

Optional Items <small>*Not included in above upfront or annual pricing</small>	
<b>FD Item:</b> Basic Field Cost Estimate	\$5,000
<b>FD Item:</b> Auto-Populate Unit Variables	\$5,000
<b>FD Item:</b> Proposed Jobs Mapsets	\$6,000
<b>Mapping Item:</b> Aerial Mapset	\$5,000

\* Client is responsible for travel expenses when Partner Staff is on site

- 50% Due upon Agreement Signature
- 50% Due upon software installation or 120 days after signature, whichever comes first
- Training events billed upon completion
- Trainings quoted reflect a class size up to 10 attendees. Over 10 attendees requires an additional trainer at \$1,500
- Pro-rated Annual Maintenance Fees to commence upon installation or 1 year after signing, which comes first
- Initial Maintenance License fee is prorated for a partial year. Following initial fee, Annual Maintenance fee is billed in Q4 and paid in January
- Total Annual Maintenance fee is in addition to current Annual Maintenance fee paid to Partner Software
- Reavis Code Utility Solutions will do configuration for Publisher, Staker, PartnerWeb, Inventory units, and Milsoft GIS interface
- Any Reavis Code Utility Solutions software is the responsibility of RUS to sale and maintain
- Ongoing support of Partner software will be provided by both Partner and Reavis Code Utility Solutions depending on the issue
- Accounting interface to Navaline will be responsibility of Partner
- Staking sheets will be responsibility of Partner and billable - not included in above costs
- Any TriGlobal Asteri and Utilipad sales to Banning CA will be the responsibility of Reavis Code Utility Solutions
- Partner Software maintenance has to be paid each year to retain support and software license



# **ATTACHMENT 4**

## **(Reavis Code Utility Solutions Quotation)**

**Roger Halverson**

---

**From:** Jody Wheeler <jody@reaviscode.com>  
**Sent:** Monday, February 11, 2019 11:52 AM  
**To:** Roger Halverson  
**Subject:** Re: Invoice 1007 from Reavis Code Utility Solutions

The second invoice includes a note about sales tax. please disregard the first invoice and submit the second one.

Thanks!  
Jody Wheeler

On Mon, Feb 11, 2019 at 2:48 PM Reavis Code Utility Solutions <[quickbooks@notification.intuit.com](mailto:quickbooks@notification.intuit.com)> wrote:



Reavis Code Utility Solutions

Roger,

Here's your invoice for the GPS units and the Integrator Software. Tri-Global will be sending the invoice for Utilipad when we get them the account info for your three users. We just need the email accounts for those three users to set them up. Let us know if you have any questions or concerns, if any portion is not as you expected, or if there are any changes we can make to assist your accounting.

Thanks for your business! We really appreciate your support.

Paul Reavis  
Reavis Code Utility Solutions

INVOICE 1007 DETAILS

**DUE 02/11/2019**

# \$25,500.00

**Print or save**

Powered by QuickBooks

**Bill to** Mr Roger Halverson  
City of Banning - CA

**Terms** Due on receipt

**Asteri:X3 Survey Bundle** \$21,000.00

X3 GNSS Receiver, Two (2) Asteri (High Capacity 3400MaH) Batteries, Lemo to AC Adapter Connector, Armband, UA35 Multi Frequency External Antenna, Asteri 2m Pole, Asteri Pole Bracket, External Battery Charger, Antenna Cable, One (1) Year Limited Hardware Warranty

3 X \$7000

**Software:RC Integrator** \$4,500.00

Monthly subscription for RC Integrator

9 X \$500

**1001**

Balance due \$25,500.00

**Print or save**

Reavis Code Utility Solutions  
PO Box 1002 Athens, GA 30603-1002

[sales@reaviscode.com](mailto:sales@reaviscode.com)

<https://reaviscode.com>

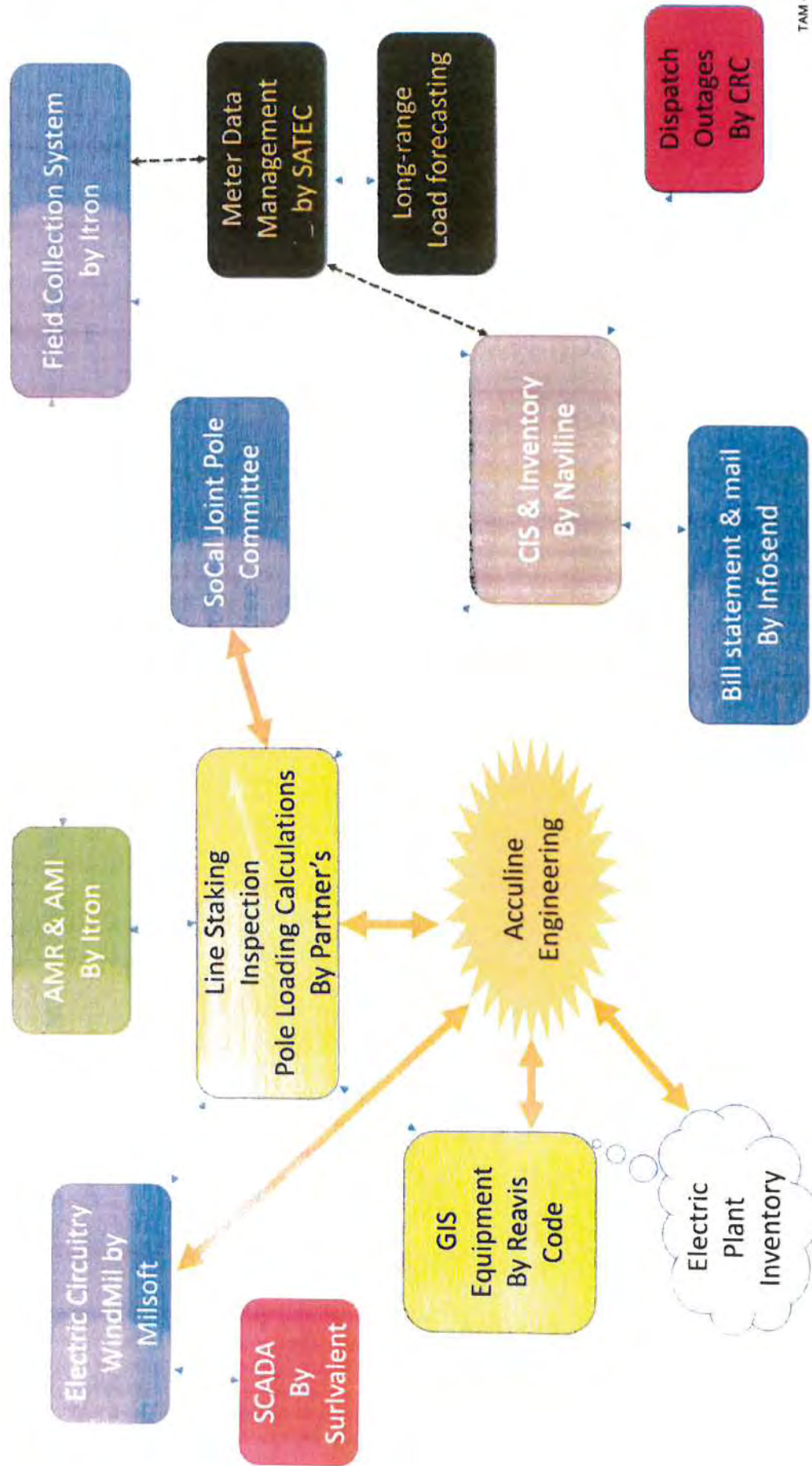
If you receive an email that seems fraudulent, please check with the business owner before paying, or you can forward the email to [spoof@intuit.com](mailto:spoof@intuit.com) so we can look into it. Your security is important to us. Read more at [security.intuit.com](https://security.intuit.com).



© Intuit, Inc. All rights reserved.

[Privacy](#) | [Security](#) | [Terms of Service](#)

**ATTACHMENT 5  
(Budget and Finance  
Committee Presentation)**





# Finance & Budget Committee

## Mapping Pilot Project

- Bring the utility into the present
- Data Base Management (Acculine Engineering)
- Process and work flow (efficient and effective)
  - Customer Service
- To realize the value of the AMR project
  - Load balancing
  - kWh, kW, kVa, kVarh
  - Load forecasting
- The value of software integration (real time data)
- See what the heck is going on out there (Visual)
  - Overhead and Underground facilities
  - Automate line crew and trucks
  - This is the mapping part

## Finance & Budget Committee Mapping Pilot Project

- Outage management and reporting (required documentation)
- Maintenance program (required documentation of inspections)
- Electric Utility Plant and asset management (vital for cost of service)
  - Long-range system planning
  - Construction work plans
  - System sectionalizing
- Overhead line design and required pole loading
- *Automate Joint Pole and make money!!!!*

**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**



**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**MEETING DATE:** June 11, 2019

**SUBJECT:** Adopt Resolution, Authorizing Annual Rate Adjustment for City Attorney in Excess of 3%.

---

**RECOMMENDED ACTION:**

Adopt Resolution, Authorizing an Annual Rate Adjustment for the City Attorney in Excess of 3%.

**BACKGROUND:**

On September 27, 2017, the City Council retained RWG to serve as City Attorney. The Legal Services Agreement establishes compensation, expenses and billing, as well as, adjustment in rates. Commencing July 1, 2019, and annually thereafter, the hourly rates set forth in Exhibit A of the Agreement automatically increase by the percentage change in the Consumer Price Index (All Urban Consumers; Los Angeles-Anaheim). The calculation is made using the month of April over the month of April in the prior year. In the event the annual adjustment equals or exceeds three percent (3%), and any other adjustments in the rates, prior written consent of the City Council is required.

As previously discussed with the City Council, the United States Bureau of Labor Statistics eliminated the Los Angeles-Anaheim-Riverside Consumer Price Index and replaced it with the Riverside-San Bernardino-Ontario Index. Historical data for the new Index is not available for this year's adjustment so, the Los Angeles-Riverside-Orange County Index, which is the Los Angeles-Long Beach-Anaheim Index, has been used for purposes of the 2019 rate adjustment. The CPI change in that Index is 3.34% over the applicable time period. Since this CPI change is more than three percent (3%), City Council approval is required.

**JUSTIFICATION:**

The Legal Services Agreement was executed in 2017 and RWG began serving as City Attorney in October, 2017. No rate adjustment was received in 2018 so, this will be the first rate adjustment for RWG since they began providing service to the City approximately 21 months ago.

**FISCAL IMPACT:**

The CPI rate adjustment will have an impact on hourly rates charged by RWG. Actual fiscal impact depends on the actual billable hours charged for services provided as well as the RWG staff member(s) who are billing hours for services provided. During the first 12 months of service, average monthly legal costs were \$58,000. A 3% increase, if billable hours remain the same, will result in a monthly increase of approximately \$1,800 and an annual increase of \$21,600. A substantial amount of time was spent on the Pardee Project, cannabis issues, including Measures N and O as well as code enforcement associated with illegal cannabis operations.

**OPTIONS:**

1. Approve as recommended.
2. Approve at a lower amount.
3. Do not approve.

**ATTACHMENTS:**

1. Resolution 2019-\_\_\_\_\_
2. RWG Legal Services Agreement
3. Letter Requesting Annual Rate Adjustment

Approved by:

  
\_\_\_\_\_  
Douglas Schulze  
City Manager

# ATTACHMENT 1

Resolution 2019-\_\_\_\_\_



## RESOLUTION 2019-\_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BANNING, CALIFORNIA, AUTHORIZING AN ANNUAL CPI  
RATE ADJUSTMENT TO THE LEGAL SERVICES  
AGREEMENT WITH RICHARDS, WATSON & GERSHON**

**WHEREAS**, the City of Banning entered into a Legal Services Agreement with Richards, Watson and Gershon (RWG) in September, 2017; and

**WHEREAS**, the Agreement established hourly rates to be charged by RWG for services provided to the City; and

**WHEREAS**, the Agreement established a process for annual rate adjustments based on the Consumer Price Index, April over April; and

**WHEREAS**, the Agreement requires prior written approval by the City Council for any rate increase equal to or exceeding three percent (3%); and

**WHEREAS**, the CPI change for April 2019 over April 2018 is 3.34%; and

**WHEREAS**, the City Council desires to continue receiving legal services from RWG.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning as follows:

**SECTION 1.** Adopt Resolution, authorizing an annual rate adjustment of 3.34% to the Legal Services Agreement with RWG, effective July 1, 2019.

**SECTION 2.** The City Clerk shall certify to the adoption of this Resolution and shall cause a certified copy to be filed in the book of original resolutions.

**PASSED, APPROVED AND ADOPTED** this 11<sup>th</sup> day of June, 2019.

---

Arthur L. Welch, Mayor  
City of Banning, California

**ATTEST:**

---

Daryl Betancur, Deputy City Clerk  
City of Banning, California

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

---

Kevin G. Ennis, City Attorney  
Richards, Watson & Gershon

[THIS SPACE INTENTIONALLY LEFT BLANK]

**CERTIFICATION:**

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the forgoing Resolution 2019-\_\_\_\_\_ was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 11<sup>th</sup> day of June, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Daryl Betancur, Deputy City Clerk  
City of Banning, California

# **ATTACHMENT 2**

## **RWG Legal Services Agreement**

**LEGAL SERVICES AGREEMENT BETWEEN THE CITY  
OF BANNING AND RICHARDS, WATSON & GERSHON, A  
PROFESSIONAL CORPORATION**

THIS LEGAL SERVICES AGREEMENT ("Agreement") is made and entered into as of October 10, 2017, by and between the City of Banning ("City"), a California Municipal Corporation, and the law firm of Richards, Watson & Gershon ("RWG"), a California Professional Corporation. In consideration of the mutual promises set forth herein, the parties agree as follows:

1. **Recitals.** This Agreement is made with respect to the following purposes and facts that each party agrees are true and correct:

A. On June 15, 2017 RWG submitted a proposal to be retained by the City to perform legal services on the terms and conditions set forth therein.

B. On September 27, 2017, the City Council decided to retain RWG to serve as City Attorney with this Agreement to be presented for approval at the City Council's October 10, 2017 meeting.

2. **Scope of Work.** RWG shall perform all legal services for the City as directed by the City Council, except as provided in Section 6 with respect to matters in which RWG has a conflict under the Rules of Professional Responsibility or California law. RWG shall at all times faithfully and competently perform all tasks described herein in a manner satisfactory to City and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. Legal services shall include the following:

A. Attendance at City Council meetings, and any other meeting directed by the City Manager or his designee, unless excused therefrom by the City Manager or his designee;

B. Attendance at staff meetings when directed by the City Manager or his designee;

C. Legal research and legal advice to the City Council, Planning Commission, other City commissions, various committees and sub-committees, the City Manager and City Staff;

D. Preparation and review of ordinances, resolutions, and agreements as requested;

E. Representation of the City in non-adversarial administrative proceedings, legislative hearings and other intergovernmental matters;

F. Representation of the City and City officials and employees in claims and litigation filed by or against the City as requested;

G. Oversight of legal matters handled by outside counsel, unless such oversight is precluded by conflict of interest laws or the Rules of Professional Responsibility;

H. Performance of the duties and exercise of the authority of a city attorney as provided in the California Government Code, other statutes and the Banning Municipal Code;

I. Legal services for entities created by the City Council;

J. Bond counsel, disclosure counsel and issuer counsel services in connection with the issuance of bonds or other securities by the City, or any entity created by the City;

K. Municipal Code criminal prosecution services; and

L. Such other legal services as may be directed by the City Council or City Manager from time to time.

### 3. Term.

A. This Agreement shall commence on October 10, 2017 ("Commencement Date") and shall continue in effect until terminated by the City or RWG. City or RWG may terminate this Agreement at any time, with or without cause, by giving thirty (30) days written notice to the other party prior to termination of this Agreement. In the event of termination, RWG shall comply with all provisions of the Rules of Professional Conduct for the termination of a client relationship, shall assist the City in transition to a new firm, and shall be compensated for such assistance at the rates provided for in this Agreement.

B. City has requested RWG to provide legal services prior to the Commencement Date in order to provide necessary representation and facilitate the orderly transition of City Attorney services. Upon approval and execution of this Agreement, RWG may submit invoices for all legal services requested by the City and performed prior to the Commencement Date, and all such services shall be compensated under the terms of this Agreement as if they were performed after the Commencement Date.

4. **Designation of City Attorney and City Prosecutor.** Kevin G. Ennis shall be designated as City Attorney for the City and as City Prosecutor for the City, to serve at the will and pleasure of the City Council. The designation may be changed by the City Council without amending this Agreement. Attorneys proposed by RWG to replace Mr. Ennis shall be subject to the prior approval of the City Council. Mr. Ennis will be the RWG attorney with responsibility for providing legal services for the City, and will be the principal contact for the City, the City Council, and City staff. Other RWG attorneys, including Assistant City Attorneys and Assistant City Prosecutors, will be assigned by Mr. Ennis, to work on legal matters for the City on an "as-needed" basis under Mr. Ennis's direct supervision.

### 5. **Compensation, Expenses and Billing.**

A. **Compensation Rates.** RWG shall be compensated for the performance of legal services in accordance with the Compensation Rate Schedule for the City ("Compensation



Rate Schedule”), attached to this Agreement as Exhibit A and incorporated herein as though set forth in full. The terms of this Agreement and the Compensation Rate Schedule shall apply to legal services performed for entities affiliated with the City that may be established. Except as provided in paragraph B of this Section, the Compensation Rate Schedule, attached as Exhibit A, shall remain in effect until amended by mutual agreement of the parties.

B. Adjustment in Rates by Change in CPI. Commencing July 1, 2019, and annually thereafter, the hourly rates set forth on Exhibit A shall automatically increase by the percentage change in the Consumer Price Index (All Urban Consumers; Los Angeles-Riverside-Orange County). The calculation shall be made using the month of April over the month of April in the prior year. Any such annual adjustment that equals or exceeds three percent (3%), and any other adjustments in the rates, shall require prior written approval of the City Council.

C. Reimbursable Expenses and other Costs. Mileage will be billed at the standard rate established by the IRS for deducting the operating expenses of an automobile used for business purposes. The IRS mileage reimbursement rate was 53.5 cents per mile on the date of the execution of this Agreement. Copying costs will be charged at 5 cents per page. There will be no charge for facsimiles. All other costs, such as long distance telephone charges, messenger and delivery services, and legal research services will be charged only at RWG’s actual out-of-pocket expenses, with the exception that the City will not be billed for telephone calls within Los Angeles and Riverside Counties. RWG will not charge for word processing and similar clerical tasks, or for the costs of first-class postage.

D. Billing. RWG shall provide to City a monthly invoice for the services provided, the time spent providing those services, and costs incurred in the form customarily supplied by RWG to public agency clients being billed on an hourly basis. City shall process and cause such invoices to be paid promptly and no later than within thirty (30) days of receipt of invoice.

6. Conflicts of Interest. RWG shall comply with all applicable laws and professional rules and standards relating to any known conflict of interest involving the City and matters upon which RWG is providing legal services under this Agreement. RWG shall not reveal confidential information of the City except with the consent of the City Manager, City Council or as otherwise required by law. RWG shall notify the City Manager or City Council, depending on the circumstances, of any conflict of interest related to matters upon which it is providing legal services under this Agreement upon discovery of any such conflicts. In the event that such conflict is not or cannot be waived or resolved, City shall retain alternate legal counsel and RWG shall assist and cooperate with such legal counsel retained by the City on the matter for which the conflict arose.

7. Client Files.

A. At the conclusion of RWG’s legal representation of the City, the original client files for the work performed under this Agreement for the City shall be made available to City. RWG will be entitled to make copies of the client files. City shall take possession of any and all original contracts, and other such important documents that may be in the client files and RWG shall have no further responsibility with regard to such documents.

B. If City does not take possession of the client files at the conclusion of the RWG's legal representation of the City, RWG shall store such client files for a period of at least one (1) year. At the conclusion of such one (1) year period, RWG may send to City a notice, advising of RWG's intention to dispose of the client files. The City shall have sixty (60) days from the date of such notice to take possession of the client files. If City does not take possession of the client files during that time, City agrees that RWG may dispose of the client files without further notice.

C. This section shall survive the expiration of this Agreement.

8. **Insurance.**

A. **Coverage Levels.** RWG shall maintain at all times during the term of this Agreement policies of insurance with at least the minimum coverage specified below:

- 1) General liability insurance with a combined single limit of not less than Two Million Dollars (\$2,000,000).
- 2) Workers' compensation coverage in compliance with California law.
- 3) Professional liability coverage with a minimum limit of liability of Two Million Dollars (\$2,000,000.00) per claim and Four Million Dollars (\$4,000,000.00) in the aggregate. Such insurance may be subject to a self-insured retention or deductible to be borne entirely by Law Firm which shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) per claim, without prior approval of the City Manager.

B. All such policies of insurance specified above shall:

- 1) Except as to professional liability insurance, provide minimum thirty (30) days notice of cancellation by insurer, except in the event of non-payment of premium, in which case ten (10) days notice to be provided. Notice of cancellation of professional liability insurance shall be provided by RWG; and
- 2) Be maintained in full force and effect throughout the term of this Agreement; and
- 3) Be placed with insurance carriers with an A.M. Best rating of no less than A-:VII or otherwise acceptable to City.

9. **Independent Contractor.** No employment relationship is created by this Agreement. RWG shall be an independent contractor of City, except that at all times providing services under the Agreement, RWG's shareholders and employees shall be acting as public officials.

10. **General Provisions.**

A. **Non-Discrimination.** In the performance of this Agreement, RWG shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, sexual orientation or medical condition. RWG shall take action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin, sexual orientation or medical condition. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training.

B. **Assignment/Delegation.** This Agreement contemplates the personal professional services of RWG and neither this Agreement, nor any portion thereof, shall be assigned or delegated without the prior written consent of the City Council.

C. **Interpretation.** The following rules of legal construction shall apply:

1) This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California.

2) The article and section captions and headings in this Agreement have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

3) Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

D. **Attorney's Fees.** The parties acknowledge and agree that each will bear its own costs, expenses and attorney's fees arising out of and/or connected with the negotiation, drafting and execution of this Agreement.

E. **Notices.** Any notice required to be given shall be deemed to have been given by depositing such notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY:

City of Banning  
99 E. Ramsey Street  
Banning, California 92220  
Attention: City Manager

TO RWG:

Kevin G. Ennis  
Richards, Watson & Gershon  
355 South Grand Avenue, 40th Floor  
Los Angeles, California 90071-3101

Either party may, from time to time, by written notice to the other, designate a different address or contact person, which shall be substituted for the one above specified. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the third (3rd) day after deposit in the United States mail.

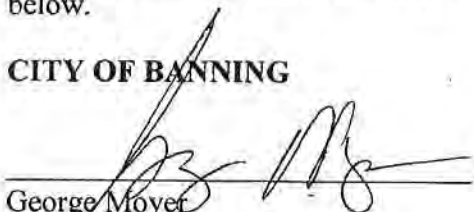
F. Signatories. Each signatory warrants and represents that he or she is competent and authorized to execute this Agreement on behalf of the party for whom he or she purports to sign.

G. Entire Agreement. This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.


H. Modification of Agreement. This Agreement and the provisions set forth herein may be modified only by way of a written amendment to this Agreement that has been approved and executed by and on behalf of both RWG and the City.

**IN WITNESS WHEREOF**, the parties have caused their duly authorized representatives to sign below.

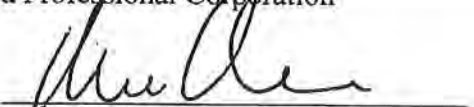
**CITY OF BANNING**

  
George Moyer  
Mayor

Attest:

  
Sonja De La Fuente  
Deputy City Clerk

RICHARDS, WATSON & GERSHON,  
a Professional Corporation

  
Kayser Sume  
Chairman, Board of Directors

## EXHIBIT A

**RICHARDS, WATSON & GERSHON  
COMPENSATION RATE SCHEDULE  
CITY OF BANNING EFFECTIVE OCTOBER 10, 2017**

**General Municipal Services.** This work consists of providing legal advice on municipal law matters, attendance at City Council and Commission meetings, workshops, staff meetings, preparation of routine ordinances and resolutions, and review and approval of standard agreements, and other services described in Section 2 of the Legal Services Agreement that are not listed under other categories of this Exhibit. The hourly rates for this work are:

Shareholder Rate	\$180
Senior Attorney Rate	\$180
Associate Rate	\$180

The term "Senior Attorney" means a non-shareholder attorney with more than seven years of experience practicing law.

**Tort Defense Litigation.** Defense or prosecution of personal injury, death or property damage litigation based on alleged negligence or dangerous conditions of public property. The hourly rates for this work are:

Shareholder Rate	\$250
Senior Attorney Rate	\$225
Associate Rate	Per Schedule

**General Litigation.** All litigation services except litigation services specifically described elsewhere in this Exhibit, and including (without limitation), defense or prosecution of writs of mandate, injunctions, breach of contract, inverse condemnation, eminent domain, election proceedings, administrative proceedings, land use and personnel. The hourly rates for this work are:

Shareholder Rate	\$295
Senior Attorney Rate	\$275
Associate Rate	Per Schedule

**Code Enforcement.** Litigation initiated by the City to enforce the Banning Municipal Code or other State or local laws or regulations. The hourly rates for this work are:

All attorneys blended rate	\$200
----------------------------	-------

**Land Use Projects.** Advice concerning subdivision map applications, specific plan applications, zoning map and text applications, the drafting and negotiation of all development agreements, drafting and negotiation of land use entitlements for significant land use projects, specialized



advice and representation on general plan, housing and zoning issues, and other related specialized legal advice and counsel, excluding land use litigation. The hourly rates for this work are:

Shareholder Rate	\$275
Senior Attorney Rate	\$250
Associate Rate	Per Schedule

**Personnel and Labor Relations.** Advice concerning employee hiring and termination, compensation and benefits, drafting, negotiating and amending employment agreements, labor negotiations, City internal administrative hearings relating to personnel and labor matters and advice compliance with City personnel policies, including but not limited to sexual harassment, excluding personnel litigation. The hourly rates for this work are:

Shareholder Rate	\$250
Senior Attorney Rate	\$225
Associate Rate	Per Schedule

**Environmental.** Legal work concerning state and federal hazardous waste laws, including CERCLA and NPDES, compliance audits, appearance before state and federal agencies concerning enforcement actions or permit applications, and litigation relating to such issues. The hourly rates for this work are:

Shareholder Rate	\$275
Senior Attorney Rate	\$250
Associate Rate	Per Schedule

**Other Legal Services Outside of Section 2 or the Categories in this Exhibit.** Legal services in specialized areas of the law, such as annexations and reorganizations, water rights, etc.

Shareholder Rate	\$275
Senior Attorney Rate	\$250
Associate Rate	Per Schedule

**Schedule of Associate Rates:**

Third Year to Seventh Year Associate	\$205
First and Second Year Associates	\$185

Associate rates change annually based on Bar admission date.

**Paralegal Rate:**

Paralegal Rate	\$150
----------------	-------



**Bond Counsel, Disclosure Counsel and Issuer Counsel Services.**

RWG shall provide bond counsel, disclosure counsel and issuer counsel services in connection with the issuance of bonds or other securities by the City, the Successor Agency of the Former Banning Redevelopment Agency ("Agency"), any separate governmental entity formed by the City or governed by the members of the City Council, or a joint powers authority formed by the City. The compensation for those services shall be as follows:

- (a) RWG shall charge \$295.00 per hour for any of these services. The maximum total fee charged for an issuance shall not exceed an amount that the City Manager deems fair and reasonable based upon generally accepted industry standards and practices.
- (b) RWG's costs and expenses would be paid in accordance with Paragraph C of Section 5 of the Agreement.
- (c) In the event the proceedings for issuance of the bonds are terminated before closing, we would expect to be paid for our services to the date of abandonment at the hourly rate set forth above, but the amount of that payment would be subject to reduction at the sole discretion of the City Manager.
- (d) In the event the City or Agency forms or is a member of a joint powers authority which has the power to issue bonds or other securities, RWG shall provide bond counsel, disclosure counsel and issuer counsel services to the joint powers authority in connection with the issuance of bonds or other securities, if and when requested by the joint powers authority, which for purposes of this Agreement shall be an Authority. The compensation for services in connection with service to the joint powers authority shall be as specified in subsections (a), (b) and (c) of this section of this Exhibit unless there is a separate contract or agreement with the joint powers authority that provides a fee schedule or rate.

# **ATTACHMENT 3**

## **RWG Letter Requesting Annual CPI Rate Adjustment**



Kevin G. Ennis

T 213.626.8484  
 F 213.626.0078  
 E kennis@rwglaw.com

355 South Grand Avenue  
 40th Floor  
 Los Angeles, CA 90071-3101  
 rwglaw.com

May 29, 2019

Douglas Schulze  
 City Manager  
 City of Banning  
 99 E. Ramsey Street  
 Banning, CA 92220

Re: Annual CPI Adjustment in City Attorney Contract Rates Effective July 1, 2019  
 that requires City Council Approval

Dear Doug,

As you may know, the Legal Services Agreement between the City of Banning and Richards, Watson & Gershon dated October 10, 2017 ("Agreement") provides for annual rate increases beginning July 1, 2019 based on the percentage change in the Consumer Price Index. Specifically, Section 5A and 5B of the Agreement provides as follows:

5A. Compensation Rates. RWG shall be compensated for the performance of legal services in accordance with the Compensation Rate Schedule for the City ("Compensation Rate Schedule"), attached to this Agreement as Exhibit A and incorporated herein as though set forth in full. The terms of this Agreement and the Compensation Rate Schedule shall apply to legal services performed for entities affiliated with the City that may be established. Except as provided in paragraph B of this Section, the Compensation Rate Schedule, attached as Exhibit A, shall remain in effect until amended by mutual agreement of the parties.

5B. Adjustment in Rates by Change in CPI. Commencing July 1, 2019, and annually thereafter, the hourly rates set forth on Exhibit A shall automatically increase by the percentage change in the Consumer Price Index (All Urban Consumers; Los Angeles-Riverside-Orange County). The calculation shall be made using the month of April over the month of April in the prior year. Any such annual adjustment that equals or exceeds three percent (3%), and any other adjustments in the rates, shall require prior written approval of the City Council.

As you may know, in 2018 the United States Bureau of Labor Statistics eliminated the Los Angeles-Anaheim-Riverside Consumer Price Index and replaced it with the Riverside-San Bernardino-Ontario Index. However, historical data for the new Index is not available and so for this year's adjustment, we have used the successor index to the Los Angeles-Riverside-Orange County Index which is the Los Angeles-Long Beach-Anaheim Index for purposes of the rate adjustment.

Based on the foregoing, our office prepared a spreadsheet to determine the change in the Consumer Price Index (All Urban consumers for the Los Angeles-Long Beach-Anaheim region) over the applicable time period (April 2018 to April 2019). A copy of the spreadsheet is attached as **Attachment A**. That spreadsheet shows the CPI changed 3.34% over the applicable time period. As it is more than three percent (3%), City Council approval is required.

Also attached as **Attachment B**, is a revised version of **Exhibit A** to the Agreement showing the changes in rates effective July 1, 2019.

Please let me know if you need any clarification or assistance from me in my private capacity in preparing or presenting this to the City Council. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Kevin G. Ennis

Attachment(s)

11303-0001\2301405v1.doc

Attachment A

Spreadsheet showing CPI Changes



**CITY OF BANNING**  
**JULY 1, 2019 RATE INCREASE PER APRIL 2019 CPI INCREASE**

CPI-All Urban Consumers (Current Series)												
Original Data Value			CURRENT									
			NEW %									
			RATES									
Series Id:	CUURS49ASA0		\$150	\$155	3.34%							
Not Seasonally Adjusted			\$180	\$186	3.34%							
Series Title:	All items in Los Angeles-Long Beach-Anaheim, CA, all urban consumers, not seasonally adjusted		\$185	\$191	3.34%							
Area:	Los Angeles-Long Beach-Anaheim, CA		\$200	\$207	3.34%							
Item:	All items		\$205	\$212	3.34%							
Base Period:	1982-84=100		\$225	\$233	3.34%							
Years:	2009 to 2019		\$250	\$258	3.34%							
			\$275	\$284	3.34%							
			\$295	\$305	3.34%							
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2009	220.719	221.439	221.376	221.693	222.522	223.906	224.010	224.507	225.226	225.264	224.317	223.643
2010	224.610	224.620	225.483	225.916	226.438	225.877	225.991	226.373	226.048	226.794	225.941	226.639
2011	228.652	229.729	232.241	233.319	233.367	232.328	231.303	231.833	233.022	233.049	232.731	231.567
2012	233.441	234.537	236.941	236.866	237.032	236.025	235.776	237.222	238.104	240.111	237.675	236.042
2013	238.015	239.753	239.995	239.043	239.346	239.223	238.920	239.219	239.611	239.940	238.677	238.742
2014	239.857	241.059	242.491	242.437	243.362	243.528	243.727	243.556	243.623	243.341	241.753	240.475
2015	239.724	241.297	243.738	243.569	246.093	245.459	247.066	246.328	245.431	245.812	245.711	245.357
2016	247.155	247.113	247.873	248.368	249.554	249.789	249.784	249.700	250.145	251.098	250.185	250.189
2017	252.373	253.815	254.525	254.971	255.674	255.275	256.023	256.739	257.890	258.883	259.135	259.220
2018	261.235	263.012	264.158	265.095	266.148	265.522	266.007	266.665	268.032	269.482	268.560	267.631
2019	269.468	269.608	271.311	273.945								
			CPI INCREASE		8.850							
			% OF INCREASE		3.34%							



**Attachment B**

Revised Exhibit A to Legal Services Agreement

## EXHIBIT A

**RICHARDS, WATSON & GERSHON**  
**COMPENSATION RATE SCHEDULE CITY OF BANNING**  
**EFFECTIVE JULY 1, 2019**

**General Municipal Services.** This work consists of providing legal advice on municipal law matters, attendance at City Council and Commission meetings, workshops, staff meetings, preparation of routine ordinances and resolutions, and review and approval of standard agreements, and other services described in Section 2 of the Legal Services Agreement that are not listed under other categories of this Exhibit. The hourly rates for this work are:

	<u>10/1/17</u>	<u>7/1/19</u>
Shareholder Rate	\$180	\$186
Senior Attorney Rate	\$180	\$186
Associate Rate	\$180	\$186

The term "Senior Attorney" means a non-shareholder attorney with more than seven years of experience practicing law.

**Tort Defense Litigation.** Defense or prosecution of personal injury, death or property damage litigation based on alleged negligence or dangerous conditions of public property. The hourly rates for this work are:

	<u>10/1/17</u>	<u>7/1/19</u>
Shareholder Rate	\$250	\$258
Senior Attorney Rate	\$225	\$233
Associate Rate	Per Schedule	Per Schedule

**General Litigation.** All litigation services except litigation services specifically described elsewhere in this Exhibit, and including (without limitation), defense or prosecution of writs of mandate, injunctions, breach of contract, inverse condemnation, eminent domain, election proceedings, administrative proceedings, land use and personnel. The hourly rates for this work are:

	<u>10/1/17</u>	<u>7/1/19</u>
Shareholder Rate	\$295	\$305
Senior Attorney Rate	\$275	\$284
Associate Rate	Per Schedule	Per Schedule

**Code Enforcement.** Litigation initiated by the City to enforce the Banning Municipal Code or other State or local laws or regulations. The hourly rates for this work are:

	<u>10/1/17</u>	<u>7/1/19</u>
All attorneys blended rate	\$200	\$207

**Land Use Projects.** Advice concerning subdivision map applications, specific plan applications, zoning map and text applications, the drafting and negotiation of all development agreements, drafting and negotiation of land use entitlements for significant land use projects, specialized advice and representation on general plan, housing and zoning issues, and other related specialized legal advice and counsel, excluding land use litigation. The hourly rates for this work are:

	<u>10/1/17</u>	<u>7/1/19</u>
Shareholder Rate	\$275	\$284
Senior Attorney Rate	\$250	\$258
Associate Rate	Per Schedule	Per Schedule

**Personnel and Labor Relations.** Advice concerning employee hiring and termination, compensation and benefits, drafting, negotiating and amending employment agreements, labor negotiations, City internal administrative hearings relating to personnel and labor matters and advice compliance with City personnel policies, including but not limited to sexual harassment, excluding personnel litigation. The hourly rates for this work are:

	<u>10/1/17</u>	<u>7/1/19</u>
Shareholder Rate	\$250	\$258
Senior Attorney Rate	\$225	\$233
Associate Rate	Per Schedule	Per Schedule

**Environmental.** Legal work concerning state and federal hazardous waste laws, including CERCLA and NPDES, compliance audits, appearance before state and federal agencies concerning enforcement actions or permit applications, and litigation relating to such issues. The hourly rates for this work are:

	<u>10/1/17</u>	<u>7/1/19</u>
Shareholder Rate	\$275	\$284
Senior Attorney Rate	\$250	\$258
Associate Rate	Per Schedule	Per Schedule

**Other Legal Services Outside of Section 2 or the Categories in this Exhibit.** Legal services in specialized areas of the law, such as annexations and reorganizations, water rights, etc.

	<u>10/1/17</u>	<u>7/1/19</u>
Shareholder Rate	\$275	\$284
Senior Attorney Rate	\$250	\$258
Associate Rate	Per Schedule	Per Schedule

**Schedule of Associate Rates:**

	<u>10/1/17</u>	<u>7/1/19</u>
Third Year to Seventh Year Associate	\$205	\$212
First and Second Year Associates	\$185	\$191

Associate rates change annually based on Bar admission date.

**Paralegal Rate:**

	<u>10/1/17</u>	<u>7/1/19</u>
Paralegal Rate	\$150	\$155

**Bond Counsel, Disclosure Counsel and Issuer Counsel Services.**

RWG shall provide bond counsel, disclosure counsel and issuer counsel services in connection with the issuance of bonds or other securities by the City, the Successor Agency of the Former Banning Redevelopment Agency ("Agency"), any separate governmental entity formed by the City or governed by the members of the City Council, or a joint powers authority formed by the City. The compensation for those services shall be as follows:

- (a) RWG shall charge \$305.00 per hour for any of these services. The maximum total fee charged for an issuance shall not exceed an amount that the City Manager deems fair and reasonable based upon generally accepted industry standards and practices.
- (b) RWG's costs and expenses would be paid in accordance with Paragraph C of Section 5 of the Agreement.
- (c) In the event the proceedings for issuance of the bonds are terminated before closing, we would expect to be paid for our services to the date of abandonment at the hourly rate set forth above, but the amount of that payment would be subject to reduction at the sole discretion of the City Manager.
- (d) In the event the City or Agency forms or is a member of a joint powers authority which has the power to issue bonds or other securities, RWG shall provide bond counsel, disclosure counsel and issuer counsel services to the joint powers authority in connection with the issuance of bonds or other securities, if and when requested by the joint powers authority, which for purposes of this Agreement shall be an Authority. The compensation for services in connection with service to the joint powers authority shall be as specified in subsections (a), (b) and (c) of this section of this Exhibit unless there is a separate contract or agreement with the joint powers authority that provides a fee schedule or rate.

**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**



**CITY OF BANNING  
BANNING UTILITY AUTHORITY REPORT**

**TO:** BANNING UTILITY AUTHORITY

**FROM:** Douglas Schulze, City Manager

**PREPARED BY:** Art Vela, Director of Public Works  
Luis Cardenas, Senior Civil Engineer

**MEETING DATE:** June 11, 2019

**SUBJECT:** Adopt Resolution of the Utility Authority, Approving an Agreement in the Amount of \$174,907 with Hemet Manufacturing Co., Inc., dba Genesis Construction for the Altitude Valve at Southwest Reservoir; Establishing a Total Project Budget of \$192,398; and Rejecting all Other Bids

**RECOMMENDED ACTION:**

The Banning Utility Authority adopt Resolution:

1. Approving an Agreement with Hemet Manufacturing Co., Inc. dba Genesis Construction for the Altitude Valve at Southwest Reservoir in the amount of \$174,907 and a 10% contingency in the amount of \$17,491 to cover unforeseen conditions and reject all other bids, for a total project budget of \$192,398.
2. Authorizing the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the Agreement with Hemet Manufacturing Co., Inc. of Hemet, CA for the "Altitude Valve at Southwest Reservoir" and to approve change orders within the 10% contingency.
3. Authorizing the City Manager or his designee to execute the Agreement with Hemet Manufacturing Co., Inc. for the "Altitude Valve at Southwest Reservoir".
4. Authorizing the Deputy City Clerk to certify the adoption of this resolution and to have said resolution filed in the book of original resolutions.



**BACKGROUND:**

The City of Banning's water system depends on storage reservoirs for fire protection, operational flexibility, and for emergencies, such as extended power outages. The largest pressure zone in the water system is the Main Zone and extends from the Sun Lakes development at one end to the Water Yard near the intersection of Bluff Street and Mias Canyon Road at the other end. There are five separate storage reservoirs, and due to friction losses in the distribution system there are instances where the water levels in the reservoirs can differ significantly. To keep from overflowing the reservoirs and wasting water, levels must be kept lower than their design capacities, thereby losing useful storage.

At the September 10, 2018 meeting, the Banning Utility Authority awarded a professional services contract to Michael Baker International for the design of Altitude Valves at the Southwest and San Gorgonio Reservoirs. The design was completed, and based on the engineer's estimate of construction costs, staff made the decision to only bid the improvements at the Southwest Reservoir. Once this project is constructed, staff will re-evaluate the need for the improvements at the San Gorgonio Reservoirs.

**JUSTIFICATION:**

The City of Banning currently operates its reservoirs within the Main Zone below their design capacity. In order to make full use of all available storage, the Southwest Reservoir must be retrofitted with an altitude valve that will prevent overflows. City operations staff has made all possible adjustments to maximize storage, but an altitude valve is needed at the Southwest Reservoir due to its location and elevation relative to other reservoirs in the same pressure zone.

Staff advertised an invitation for bids through its PlanetBids web page and five firms attended the mandatory pre-bid meeting. All five firms submitted bids and the results are summarized as follows:

Firm Name	Total Bid Amount
Hemet Manufacturing Co., Inc.	\$ 174,907
Spiess construction Co., Inc.	\$ 226,344
Cora Constructors, Inc.	\$ 229,000
TE Roberts, Inc.	\$ 239,060
Kirtley Construction, Inc.	\$ 288,800

The lowest responsive bid was from Hemet Manufacturing Co., Inc. from Hemet, CA.

**FISCAL IMPACT:**

Staff recommends awarding an agreement to Hemet Manufacturing Co., Inc. in the amount of \$174,907 and establishing a 10% contingency in the amount of \$17,491 for

a total project budget of \$192,398, which will be paid for from Account No. 661-6300-471.95-09 (Special Utility Cap Items/Reservoirs). There are sufficient funds in the approved FY 19 budget for this project.

**ALTERNATIVE:**

Do not approve and provide alternative direction. Not funding the installation of an altitude valve addition at the Southwest Reservoir location means that the reservoir must be operated safely below its design capacity to avoid accidental overflows. Having less storage for emergencies and fighting fires is a risk to the safety and reliable water service of the community.

**ATTACHMENTS:**

1. Resolution 2019-\_\_ UA
2. Agreement
3. Bid Specifications and Addendum

Approved by:



Douglas Schulze  
City Manager

# **ATTACHMENT 1**

(Resolution 2019-\_\_ UA)

## RESOLUTION 2019-\_\_ UA

**A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, APPROVING AN AGREEMENT IN THE AMOUNT OF \$174,907 WITH HEMET MANUFACTURING CO., INC. FOR THE ALTITUDE VALVE AT SOUTHWEST RESERVOIR; ESTABLISHING A TOTAL PROJECT BUDGET OF \$192,398; AND REJECTING ALL OTHER BIDS.**

**WHEREAS**, the City of Banning owns and operates a public water system that supplies domestic water to approximately 29,500 people through approximately 10,500 service connections; and

**WHEREAS**, the City owns and operates 5 water storage reservoirs in its Main Pressure Zone; and

**WHEREAS**, an altitude valve has been identified as necessary to maximize the usable storage of the 5 existing reservoirs; and

**WHEREAS**, staff advertised an invitation for bids for qualified contractors using the PlanetBids system; and

**WHEREAS**, five bids were received; and

**WHEREAS**, Hemet Manufacturing Co, Inc. of Hemet, CA was the lowest responsive bidder in the amount of \$174,907.

**NOW, THEREFORE, BE IT RESOLVED** by the Banning Utility Authority of the City of Banning as follows:

**SECTION 1.** The Banning Utility Authority adopts Resolution 2019-\_\_ UA Approving an Agreement with Hemet Manufacturing Co, Inc. of Hemet, CA for the Altitude Valve at Southwest Reservoir in the amount of \$174,907 and establishing a 10% contingency in the amount of \$17,491 to cover unforeseen conditions for a total project budget of \$192,398 and rejecting all other bids.

**SECTION 2.** The City Manager or his designee is authorized to make necessary budget adjustments, appropriations and transfers related to the Agreement for "Altitude Valve at Southwest Reservoir" and approve change orders within the 10% contingency.

**SECTION 3.** The City Manager or his designee is authorized to execute the Agreement with Hemet Manufacturing Co, Inc. for "Altitude Valve at Southwest Reservoir".

**SECTION 4.** The Utility Deputy Secretary Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

**PASSED, ADOPTED AND APPROVED** this 11th day of June, 2019.

---

Arthur L. Welch, Chairman  
Banning Utility Authority

**ATTEST:**

---

Daryl Betancur, Deputy Secretary  
Banning Utility Authority

**APPROVED AS TO FORM AND  
LEGAL CONTENT:**

---

Kevin G. Ennis, Authority Counsel  
Richards, Watson & Gershon

**CERTIFICATION:**

I, Daryl Betancur, Deputy Secretary of the Banning Utility Authority of Banning, California, do hereby certify that the foregoing Resolution 2019-\_\_ UA was duly adopted by the Banning Utility Authority of the City of Banning, California, at a Regular Meeting thereof held on the 11th day of June, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Daryl Betancur, Deputy Secretary  
Banning Utility Authority  
City of Banning, California



# ATTACHMENT 2

(Agreement)

SECTION 1.5  
OF  
PROCEDURAL DOCUMENTS  
AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between the CITY OF BANNING, hereinafter called "Owner", and Hermet MFG Co. Inc. doing business as Genesis Construction hereinafter called "Contractor".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, it is agreed that:

1. The Contractor will commence and complete the **PROJECT NO. 2018-07W, "ALTITUDE VALVE AT SOUTHWEST RESERVOIR"** as per the plan and specifications.
2. The Contractor will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the Project described herein.
3. The Contractor will commence the Work required by the Contract Documents on or before the date specified to commence Work in the Notice to Proceed and will complete the same within **90 Working Days** unless the period for completion is extended otherwise by the Contract Documents.
4. Owner and Contractor have discussed the provisions of Civil Code 1671 and the damages, which may be incurred by Owner if the Work is not completed within the time specified in this Agreement. Owner and Contractor hereby represent that at the time of signing this Agreement, it is impractical and extremely difficult to fix the actual damage which will be incurred by owner if the Work is not completed within the number of working days allowed.
5. The Contractor hereby acknowledges that the plans and specifications are made as a part of this contract.
6. The Contractor agrees to perform all of the Work described in the Contract Documents and comply with the terms therein for the sum of \$174,907.00 or as shown in the Notice of Award; subject to additions and deductions, if any, in accordance with said documents. Payment shall not be made more often than once each thirty (30) days. Final payment shall be made thirty-five (35) days subsequent to recordation of Notice of Completion. Contractor may, at his sole cost and expense, substitute securities equivalent to any moneys withheld by the Owner to ensure performance under the contract. Such securities shall be deposited with the Owner or with a state or federally chartered bank acceptable to owner as escrow agent who shall pay such moneys to the Contractor upon satisfactory completion of the contract. The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any

interest thereon. Securities eligible for substitution shall include those listed in Public Contract Code Section 22300.

7. The term "Contract Documents" means and includes the following:

- a. Invitation for Bids – Section I
- b. Instruction to Bidders
- c. Bid
- d. Bid Bond
- e. Agreement
- f. Payment Bond
- g. Contract Performance Bond
- h. Certificates of Insurance and Endorsements
- i. Notice of Award
- j. Notice to Proceed
- k. Change Orders
- l. Section II - General Conditions
- m. Section III - Supplemental General Conditions
- n. Section IV - Special Provisions, Standard Drawings and Details
- o. Drawings and specifications prepared by the City of Banning or consultant
- p. Addenda:

No. 1, dated May 6, 2019  
 No.           , dated           , 2019  
 No.           , dated           , 2019  
 No.           , dated           , 2019

- 8. The owner will pay to the Contractor in the manner and at such times as set forth in the General Conditions such amounts as required by the Contract Documents.
- 9. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

Should any litigation or arbitration be commenced between the parties hereto concerning said project, any provisions of this Contract, or the rights and obligations of either in relation thereto the party, Owner or Contractor, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for his attorney's fees in such litigation, and court costs.

- 10. Pursuant to Section 1770 et. seq., the following, of the California Labor Code, the successful bidder shall pay not less than the higher of State or Federal prevailing rate of per diem wages. The owner has obtained the State Prevailing wage rates from the California Department of Industrial Relations. Copies of such prevailing rate of per diem wages are on file at the office of the owner, which copies shall be made available for review to any interested party on request.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in copies each of which shall be deemed an original on the date first above written.

OWNER:  
CITY OF BANNING

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Please Type  
Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Please Type  
Title: \_\_\_\_\_

CONTRACTOR:

(SEAL)

By: Candace D. Perry  
Name: Candace D. Perry  
Please Type  
Title: President  
Address: 600 N. State St.  
Hemet, CA 92543  
Contractor's License No. 433661

ATTEST:

By: Daniel A. Latuska  
Name: Daniel A. Latuska  
Please Type  
Title: Vice President

All signatures on this Contract Agreement on behalf of the Contractor must be acknowledged before a Notary Public. In the event that the Contractor is a corporation, the President/Vice President and the corporate secretary of the corporation must sign and the corporate seal must be affixed thereto.

## CORPORATE CERTIFICATE

I, Candace D. Perry, certify that I am the Corporate Secretary of the  
Hemet Manufacturing Company, Inc. Corporation named as CONTRACTOR  
dba Genesis Construction  
 in the foregoing contract; that Candace D. Perry, who signed said  
 contract on behalf of the CONTRACTOR was then President, Secretary of  
Treasurer  
 said corporation; and that said contract was duly signed for and in behalf of said  
 corporation by authority of its governing body and is within the scope of its corporate  
 powers.

Name: Candace D. Perry  
 Candace D. Perry, President

(SEAL)

ATTEST:

Daniel A. Latuska

Name Daniel A. Latuska  
 (Please Print)

Title Vice President

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT** Civil Code § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

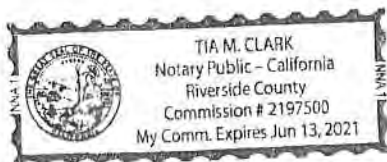
County of Riverside

On 5-16-19 before me, Tia M. Clark, Notary Public,  
Date Insert Name of Notary exactly as it appears on the official seal

personally appeared Candace D. Perry and Daniel A. Latuska

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature Tia M. Clark

Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of the form to another document.*

**Description of Attached Document**

Title or Type of Document: 2018-017W Contract Document

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

☐ Individual Pres., Vice Pres.,

☒ Corporate Officer — Title(s): Serv., Treas.

☐ Partner ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer is Representing:

Hemet Mfg. Co., Inc. dba

Genesis Construction

**RIGHT THUMBPRINT  
OF SIGNER**

Top of thumb here

Signer's Name: \_\_\_\_\_

☐ Individual

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Partner ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer is Representing:

**RIGHT THUMBPRINT  
OF SIGNER**

Top of thumb here



EXECUTED IN TRIPLICATE

BOND NUMBER: ASB870

SECTION 1.7  
OF  
PROCEDURAL DOCUMENTS  
CONTRACT PERFORMANCE BOND  
(CALIFORNIA PUBLIC WORK)

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the City of Banning (referred to hereinafter as "Obligee") has awarded to Hemet Manufacturing \* hereinafter designated as the "Contractor") a contract dated \_\_\_\_\_, for work described as follows:

**PROJECT NO. 2018-07W, "ALTITUDE VALVE AT SOUTHWEST RESERVOIR"** (hereinafter referred to as the "Public Work Contract"); and WHEREAS, the Contractor is required by said Public Work Contract to perform the terms thereof and to provide a bond both for the performance and guaranty thereof. \* Company, Inc. dba Genesis Construction

NOW, THEREFORE, we Hemet Manufacturing Company, Inc. dba Genesis Construction

the undersigned Contractor, as Principal, and Hudson Insurance Company, a corporation organized and existing under the laws of the State of Delaware, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the CITY OF BANNING in the sum of One Hundred Seventy Four Thousand Nine Hundred Seven and 00/100 Dollars (\$174,907.00), said sum being not less than 100 percent of the total amount payable by the said obligee under the terms of the said Public Work Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the bounden Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the said Public Work Contract and any alteration thereof made as therein provided, on his or its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill the one-year guarantee of all materials and workmanship; and indemnify and save harmless the Oblige, its officers and agents, as stipulated in said Public Work Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect. In case suit is brought upon this bond, the said Surety will pay to oblige a reasonable attorney's fee to be fixed by the Court.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the said Public Work Contract or to the work to be performed there under or the Specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any

such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

No final settlement between the Obligee and the Contractor hereunder shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 16th day of May, 2019.

PRINCIPAL: Hemet Manufacturing  
Company, Inc. dba Genesis Construction

By Candace D. Perry  
Candace D. Perry, President

SURETY:  
Hudson Insurance Company

By M. Guise  
Attorney-in-fact, Maria Guise

The rate of premium on this bond is \$25 / \$15 per thousand.

The total amount of premium charged, \$ 3,624.00. (The above must be filled in by corporate surety.)

PREMIUM SUBJECT TO ADJUSTMENT  
BASED ON FINAL CONTRACT PRICE.

**IMPORTANT:** Surety companies executing Bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in Section 105 of the California Insurance Code.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA           )  
COUNTY OF \_\_\_\_\_ )         S.S.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

\*\*\*\*\*

## CAPACITY CLAIMED BY SIGNER:

Though statute does not require the notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

\_\_\_\_\_ Individual (s)  
 \_\_\_\_\_ Corporate Officer (s) \_\_\_\_\_ and \_\_\_\_\_  
 \_\_\_\_\_ Titles: \_\_\_\_\_ and \_\_\_\_\_  
 \_\_\_\_\_ Partner(s) \_\_\_\_\_ Limited \_\_\_\_\_ General  
 \_\_\_\_\_ Attorney-in-fact \_\_\_\_\_  
 \_\_\_\_\_ Trustee (s) \_\_\_\_\_  
 \_\_\_\_\_ Guardian/Conservator \_\_\_\_\_  
 \_\_\_\_\_ Other: \_\_\_\_\_

Signer is representing: \_\_\_\_\_

\*\*\*\*\*

**ATTENTION NOTARY:** Although the information requested below is optional, it could prevent fraudulent attachment of this certificate to an unauthorized document.

Title of type of document: \_\_\_\_\_

Number of pages: \_\_\_\_\_

Date of document: \_\_\_\_\_

Signer(s) other than named above: \_\_\_\_\_

**This Certificate must be attached to the document described above**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT** Civil Code § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

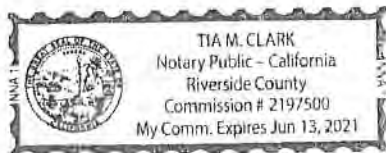
STATE OF CALIFORNIA

County of Riverside

On 5-20-19 before me, Tia M. Clark, Notary Public,  
Date Insert Name of Notary exactly as it appears on the official seal

personally appeared Candace D. Perry and Daniel A. Latuska  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature

*Tia M. Clark*  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of the form to another document.*

**Description of Attached Document**

Title or Type of Document: Payment/Performance Bond ASB870

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- ☐ Individual Pres., Vice Pres.,  
☒ Corporate Officer — Title(s): Secy., Treas.  
☐ Partner ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

**RIGHT THUMBPRINT  
OF SIGNER**

Top of thumb here

Signer is Representing:  
Hemet Mfg. Co., Inc. dba  
Genesis Construction

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

**RIGHT THUMBPRINT  
OF SIGNER**

Top of thumb here

Signer is Representing:  
 \_\_\_\_\_  
 \_\_\_\_\_







ALNT-167-0008

## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That HUDSON INSURANCE COMPANY, a corporation of the State of Delaware, with offices at 100 William Street, New York, New York, 10038, has made, constituted and appointed, and by these presents, does make, constitute and appoint

Lawrence F. McMahon, Sarah Myers, Ryan E. Warnock, Janice Martin, Christopher Conte, Maria Guise  
of the State of California

its true and lawful Attorney(s)-in-Fact, at New York, New York, each of them alone to have full power to act without the other or others, to make, execute and deliver on its behalf, as Surety, bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking shall obligate said Company for any portion of the penal sum thereof in excess of the sum of Ten Million Dollars (\$10,000,000.00).

Such bonds and undertakings when duly executed by said Attorney(s)-in-Fact, shall be binding upon said Company as fully and to the same extent as if signed by the President of said Company under its corporate seal attested by its Secretary.

In Witness Whereof, HUDSON INSURANCE COMPANY has caused these presents to be of its Senior Vice President thereunto duly authorized, on this 30th day of November, 20 17 at New York, New York.



(Corporate seal)

Attest: Dina Daskalakis  
Dina Daskalakis  
Corporate Secretary

STATE OF NEW YORK  
COUNTY OF NEW YORK SS.



HUDSON INSURANCE COMPANY

By: Michael P. Cifone  
Michael P. Cifone  
Senior Vice President

On the 30th day of November, 2017, before me personally came Michael P. Cifone to me known, who being by me duly sworn did depose and say that he is a Senior Vice President of HUDSON INSURANCE COMPANY, the corporation described herein and which executed the above instrument, that he knows the seal of said Corporation, that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said Corporation, and that he signed his name thereto by like order.

(Notarial Seal)

Ann M. Murphy  
ANN M. MURPHY  
Notary Public, State of New York  
No. 01MU6067553  
Qualified in Nassau County  
Commission Expires December 10, 2021

## CERTIFICATION

STATE OF NEW YORK  
COUNTY OF NEW YORK SS.

The undersigned Dina Daskalakis hereby certifies:

That the original resolution, of which the following is a true and correct copy, was duly adopted by unanimous written consent of the Board of Directors of Hudson Insurance Company dated July 27<sup>th</sup>, 2007, and has not since been revoked, amended or modified:

"RESOLVED, that the President, the Executive Vice Presidents, the Senior Vice Presidents and the Vice Presidents shall have the authority and discretion, to appoint such agent or agents, or attorney or attorneys-in-fact, for the purpose of carrying on this Company's surety business, and to empower such agent or agents, or attorney or attorneys-in-fact, to execute and deliver, under this Company's seal or otherwise, bonds obligations, and recognizances, whether made by this Company as surety thereon or otherwise, indemnity contracts, contracts and certificates, and any and all other contracts and undertakings made in the course of this Company's surety business, and renewals, extensions, agreements, waivers, consents or stipulations regarding undertakings so made; and

FURTHER RESOLVED, that the signature of any such Officer of the Company and the Company's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seal when so used whether heretofore or hereafter, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed."

THAT the above and foregoing is a full, true and correct copy of Power of Attorney issued by said Company, and of the whole of the original and that the said Power of Attorney is still in full force and effect and has not been revoked, and furthermore that the Resolution of the Board of Directors, set forth in the said Power of Attorney is now in force.

Witness the hand of the undersigned and the seal of said Corporation this MAY 16 2019 day of MAY, 2019.



By: Dina Daskalakis  
Dina Daskalakis, Corporate Secretary



EXECUTED IN TRIPLICATE

BOND NUMBER: ASB870  
PREMIUM IS INCLUDED  
IN PERFORMANCE BOND.

SECTION 1.6  
OF  
PROCEDURAL DOCUMENTS  
  
PAYMENT BOND  
(CALIFORNIA PUBLIC WORK)

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the City of Banning (referred to hereinafter as "Obligee") has awarded to <sup>Hemet Manufacturing Company, Inc. dba</sup> ~~Genesis Construction~~ (hereinafter designated as the "Contractor") a contract dated \_\_\_\_\_, for work described as follows:

**PROJECT NO. 2018-07W, "ALTITUDE VALVE AT SOUTHWEST RESERVOIR"**  
(hereinafter referred to as the "Public Work Contract"); and

WHEREAS said Contractor is required to furnish a bond in connection with said Public Work Contract, and pursuant to Section 3247 of the California Civil Code;

NOW, THEREFORE, we <sup>Hemet Manufacturing Company, Inc.</sup> ~~dba Genesis Construction~~, the undersigned Contractor, as Principal, and Hudson Insurance Company, a corporation organized and existing under the laws of the State of Delaware, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the CITY OF BANNING and to any and all persons, companies or corporation entitled to file stop notices under Section 3181 of the California Civil Code in the sum of <sup>One Hundred Seventy Four Thousand Nine Hundred Seven and 00/100</sup> Dollars (\$ 174,907.00 ), said sum being not less than 100 percent of the total amount payable by the said obligee under the terms of the said Public Work Contract, for which payment will and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if said Contractor, his or its heirs, executors, administrators, successors or assigns, or Subcontractors, shall fail to pay for any materials, provisions, vendor or other supplies or teams, implements or machinery used in, upon, for or about the performance of the Public Work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of said Contractor and his Subcontractors pursuant to Section 18806 of the Revenue and Taxation Code with respect to such work and labor as required by the provisions of Section 3247 through 3252 of the Civil Code, the Surety or Sureties hereon will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, the said Surety or Sureties will pay a reasonable attorney's fee to be fixed by the Court. In addition to the provisions herein above, it is agreed that this bond will inure to the benefit of any and all persons, companies and corporations entitled to serve stop notices under

Section 3181 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the said Public Work Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

No final settlement between the Obligor and the Contractor hereunder shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 16th day of May, 2019.

PRINCIPAL: Hemet Manufacturing Company, Inc.  
dba Genesis Construction

By: Candace D. Perry  
Candace D. Perry, President

SURETY: Hudson Insurance Company

By: M. Guise  
Attorney-in-fact, Maria Guise

**IMPORTANT:** Surety companies executing Bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in Section 105 of the California Insurance Code.

Please see attached California All-Purpose Acknowledgment for Surety

**CALIFORNIA  
ALL PURPOSE ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA                    )  
  )                    s.s.  
COUNTY OF                                )

On \_\_\_\_\_ before me, personally appeared \_\_\_\_\_ personally known to me; or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that (he/she/they) executed the same in his/her/their/ authorized capacity(ies), and that the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

\*\*\*\*\*

## CAPACITY CLAIMED BY SIGNER:

Though statute does not require the notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

\_\_\_\_\_ Individual (s)  
 \_\_\_\_\_ Corporate Officer (s) \_\_\_\_\_ and \_\_\_\_\_  
 \_\_\_\_\_ Titles: \_\_\_\_\_ and \_\_\_\_\_  
 \_\_\_\_\_ Partner(s) \_\_\_\_\_ Limited \_\_\_\_\_ General  
 \_\_\_\_\_ Attorney-in-fact  
 \_\_\_\_\_ Trustee (s)  
 \_\_\_\_\_ Guardian/Conservator  
 \_\_\_\_\_ Other: \_\_\_\_\_

Signer is representing:

\*\*\*\*\*

**ATTENTION NOTARY:** Although the information requested below is optional, it could prevent fraudulent attachment of this certificate to an unauthorized document.

Title of type of document: \_\_\_\_\_

Number of pages: \_\_\_\_\_

Date of document: \_\_\_\_\_

\_\_\_\_\_  
Signer(s) other than named above:

**This Certificate must be attached to the document described above**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT** Civil Code § 1189

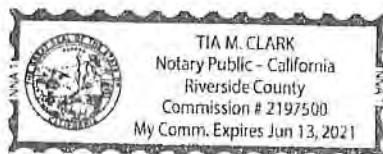
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA }

County of Riverside

On 5-20-19 before me, Tia M. Clark, Notary Public,  
Date Insert Name of Notary exactly as it appears on the official seal

personally appeared Candace D. Perry and Daniel A. Latuska  
Name(s) of Signer(s)



Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature

*Tia M. Clark*  
Signature of Notary Public**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of the form to another document.*

**Description of Attached Document**Title or Type of Document: Payment/Performance Bond ASB870

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

☐ Individual Pres., Vice Pres.,☒ Corporate Officer — Title(s): Secy., Treas.☐ Partner ☐ Limited ☐ General☐ Attorney in Fact☐ Trustee☐ Guardian or Conservator☐ Other: \_\_\_\_\_**RIGHT THUMBPRINT  
OF SIGNER**

Top of thumb here

Signer is Representing:

Hemet Mfg. Co., Inc. dba  
Genesis Construction

Signer's Name: \_\_\_\_\_

☐ Individual☐ Corporate Officer — Title(s): \_\_\_\_\_☐ Partner ☐ Limited ☐ General☐ Attorney in Fact☐ Trustee☐ Guardian or Conservator☐ Other: \_\_\_\_\_**RIGHT THUMBPRINT  
OF SIGNER**

Top of thumb here

Signer is Representing:







ALNT-167-0008

## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That HUDSON INSURANCE COMPANY, a corporation of the State of Delaware, with offices at 100 William Street, New York, New York, 10038, has made, constituted and appointed, and by these presents, does make, constitute and appoint

Lawrence F. McMahon, Sarah Myers, Ryan E. Warnock, Janice Martin, Christopher Conte, Maria Guise

of the State of California

its true and lawful Attorney(s)-in-Fact, at New York, New York, each of them alone to have full power to act without the other or others, to make, execute and deliver on its behalf, as Surety, bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking shall obligate said Company for any portion of the penal sum thereof in excess of the sum of Ten Million Dollars (\$10,000,000.00).

Such bonds and undertakings when duly executed by said Attorney(s)-in-Fact, shall be binding upon said Company as fully and to the same extent as if signed by the President of said Company under its corporate seal attested by its Secretary.

In Witness Whereof, HUDSON INSURANCE COMPANY has caused these presents to be of its Senior Vice President thereunto duly authorized, on this 30th day of November, 2017 at New York, New York.



(Corporate seal)

Attest:  
Dina Daskalakis  
Corporate Secretary

STATE OF NEW YORK  
COUNTY OF NEW YORK. SS.



HUDSON INSURANCE COMPANY

By: *Michael P. Cifone*  
Michael P. Cifone  
Senior Vice President

On the 30th day of November 2017, before me personally came Michael P. Cifone to me known, who being by me duly sworn did depose and say that he is a Senior Vice President of HUDSON INSURANCE COMPANY, the corporation described herein and which executed the above instrument, that he knows the seal of said Corporation, that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said Corporation, and that he signed his name thereto by like order.

(Notarial Seal)

*Ann M. Murphy*  
ANN M. MURPHY  
Notary Public, State of New York  
No. 01MU6067553  
Qualified in Nassau County  
Commission Expires December 10, 2021

## CERTIFICATION

STATE OF NEW YORK  
COUNTY OF NEW YORK. SS.

The undersigned Dina Daskalakis hereby certifies:

That the original resolution, of which the following is a true and correct copy, was duly adopted by unanimous written consent of the Board of Directors of Hudson Insurance Company dated July 27<sup>th</sup>, 2007, and has not since been revoked, amended or modified:

"RESOLVED, that the President, the Executive Vice Presidents, the Senior Vice Presidents and the Vice Presidents shall have the authority and discretion, to appoint such agent or agents, or attorney or attorneys-in-fact, for the purpose of carrying on this Company's surety business, and to empower such agent or agents, or attorney or attorneys-in-fact, to execute and deliver, under this Company's seal or otherwise, bonds obligations, and recognizances, whether made by this Company as surety thereon or otherwise, indemnity contracts, contracts and certificates, and any and all other contracts and undertakings made in the course of this Company's surety business, and renewals, extensions, agreements, waivers, consents or stipulations regarding undertakings so made; and

FURTHER RESOLVED, that the signature of any such Officer of the Company and the Company's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seal when so used whether heretofore or hereafter, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed."

THAT the above and foregoing is a full, true and correct copy of Power of Attorney issued by said Company, and of the whole of the original and that the said Power of Attorney is still in full force and effect and has not been revoked, and furthermore that the Resolution of the Board of Directors, set forth in the said Power of Attorney is now in force.

Witness the hand of the undersigned and the seal of said Corporation this MAY 16 2019, 20



By: *Dina Daskalakis*  
Dina Daskalakis, Corporate Secretary





GENECON-07

CLICHT

# CERTIFICATE OF LIABILITY INSURANCE

 DATE (MM/DD/YYYY)  
 5/20/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 0757776 Newport Beach, CA - HUB International Insurance Services Inc. 4695 MacArthur Court, Suite 600 Newport Beach, CA 92660		CONTACT NAME: <b>G.Ood</b> PHONE (A/C, No, Ext): (949) 623-3980 FAX (A/C, No): (949) 891-0407 E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A : Old Republic General Insurance Corp.	
		INSURER B :	
		INSURER C :	
		INSURER D :	
		INSURER E :	
		INSURER F :	

COVERAGES	CERTIFICATE NUMBER:	REVISION NUMBER:
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.		

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	X		A1CG36091802	7/31/2018	7/31/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY	X		A1CA36091802	7/31/2018	7/31/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		X	A1CW36091800	1/1/2019	1/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 RE: Genesis Construction Job #: 606; City of Banning Job #: 2018-07W; Job Description: Altitude Valve at Southwest Reservoir.  
 County of Riverside, County of San Bernardino, The City of Banning, its officers, officials, employees and agents are included as Additional Insureds where required by an executed written contract as respects General Liability and Auto Liability per attached endorsements.  
 This Insurance shall apply as Primary and Non-Contributory where required by an executed written contract as respects General Liability per attached endorsement.  
 Waiver of Subrogation applies where required by an executed written contract as respects Workers' Compensation per attached endorsement.

## CERTIFICATE HOLDER

City of Banning  
 Attn: Purchasing Division  
 99 E. Ramsey Street  
 Banning, CA 92220-4837

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

AGENCY CUSTOMER ID: GENECON-07

CLICHT

LOC #: 1



## ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Newport Beach, CA - HUB International Insurance Services Inc.		License # 0757776	NAMED INSURED Hemet Manufacturing Co., Inc. dba Genesis Construction PO Box 5399 Hemet, CA 92544	
POLICY NUMBER SEE PAGE 1				
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1		

## ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

## CANCELLATION:

Should the policy(ies) be cancelled before the expiration date, HUB International Insurance Services Inc. (HUB), independent of any rights which may be afforded within the policies to the certificate holder named below, will provide to such certificate holder notice of such cancellation within 30 (thirty) days of the cancellation date, except in the event the cancellation is due to non-payment of premium, in which case HUB will provide to such certificate holder notice of such cancellation within ten (10) days of the cancellation date.

POLICY NUMBER: A1CG36091802

COMMERCIAL GENERAL LIABILITY  
CG 20 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – SCHEDULED PERSON OR  
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Where required by an executed written contract.	Where required by an executed written contract.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

- C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

POLICY NUMBER: A1CG36091802

COMMERCIAL GENERAL LIABILITY  
CG 20 37 04 13**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART**SCHEDULE**

<b>Name Of Additional Insured Person(s) Or Organization(s)</b>	<b>Location And Description Of Completed Operations</b>
Where required by executed written contract, but only when coverage for Completed Operations is specifically required by that contract.	Where required by executed written contract, but only when coverage for Completed Operations is specifically required by that contract.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
  2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



# OLD REPUBLIC GENERAL INSURANCE CORPORATION

## CHANGES ADDITIONAL INSURED PRIMARY WORDING SCHEDULE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Name of Additional Insured Person(s)  
Or Organization(s):

Location(s) of Covered Operations

Where required by written contract.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The insurance provided by this endorsement is primary insurance and we will not seek contribution from any other insurance of a like kind available to the person or organization shown in the schedule above unless the other insurance is provided by a contractor other than the person or organization shown in the schedule above for the same operation and job location. If so, we will share with that other insurance by the method described in paragraph 4.c. of Section IV – Commercial General Liability Conditions.

All other terms and conditions remain unchanged.

Named Insured	Hemet Manufacturing Co. Inc. dba Genesis Construction		
Policy Number	A1CG36091802	Endorsement No.	
Policy Period	07/31/2018 to 07/31/2019	Endorsement Effective Date:	07/31/2018
Producer's Name:			
Producer Number:			



POLICY NUMBER: A1CA36091802

COMMERCIAL AUTO  
CA 20 48 10 13**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****DESIGNATED INSURED FOR  
COVERED AUTOS LIABILITY COVERAGE**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

**Named Insured:** Hemet Manufacturing Co. Inc. dba Genesis Construction**Endorsement Effective Date:** 07/31/2018**SCHEDULE****Name Of Person(s) Or Organization(s):**

WHERE REQUIRED BY AN EXECUTED WRITTEN CONTRACT.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph A.1. of Section II – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph D.2. of Section I – Covered Autos Coverages of the Auto Dealers Coverage Form.

## OLD REPUBLIC GENERAL INSURANCE CORPORATION

## WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

WHEN REQUIRED BY WRITTEN CONTRACT.

The premium charge for this endorsement is \$0.00

Named Insured	Hemet Manufacturing Company, Inc. dba Genesis Construction		
Policy Number	A1CW36091800	Endorsement No.	000
Policy Period	01/01/2019 to 01/01/2020	Endorsement Effective Date:	01/01/2019
Producer's Name:	OLD REPUBLIC CONTRACTORS INSURANCE AGENCY, INC.		
Producer Number:	0000007000		



AUTHORIZED REPRESENTATIVE

12/20/2018

DATE

# **ATTACHMENT 3**

(Bid Specifications and Addendum)

Invitation for Bids & Contract Documents  
For

Project No. 2018-07W

**IFB NO. 19-040 - ALTITUDE VALVE AT  
SOUTHWEST RESERVOIR**



City of Banning  
Public Works Department  
99 E. Ramsey Street  
Banning, California 92220

April 2019

## TABLE OF CONTENTS

<b>SECTION I - PROCEDURAL DOCUMENTS.....</b>	<b>I-0</b>
INVITATION FOR BIDS.....	I-2
PAYMENT.....	I-3
SUBSTITUTION OF SECURITIES.....	I-3
REQUIRED LICENSE CLASSIFICATION.....	I-4
AWARD AND EXECUTION.....	I-4
INSTRUCTION TO BIDDER.....	I-6
FILING A BID PROTEST.....	I-9
BIDDER INFORMATION.....	I-11
BID FORM.....	I-12
EX PARTE COMMUNICATIONS CERTIFICATION.....	I-13
DISQUALIFICATIONS QUESTIONNAIRE.....	I-14
DISCLOSURE OF GOVERNMENT POSITIONS.....	I-15
NON COLLUSION AFFIDAVIT.....	I-16
BIDDER ACKNOWLEDGEMENT.....	I-17
LIST OF SUBCONTRACTORS.....	I-19
LIST OF MATERIAL SUPPLIERS.....	I-21
LIST OF MANUFACTURERS.....	I-23
DECLARATION OF ACCURACY.....	I-24
CERTIFICATION, LABOR CODE 1861.....	I-25
QUESTIONNAIRE REGARDING BIDDERS.....	I-26
BID BOND.....	I-27
AGREEMENT.....	I-30
CORPORATE CERTIFICATE.....	I-33
PAYMENT BOND.....	I-34
CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT.....	I-36
CONTRACT PERFORMANCE BOND.....	I-37
CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT.....	I-39
INDEMNITY AND INSURANCE STATEMENT.....	I-40
NOTICE OF AWARD.....	I-44
ACCEPTANCE OF NOTICE.....	I-45
NOTICE TO PROCEED.....	I-46
ACCEPTANCE OF NOTICE.....	I-47
CHANGE ORDER.....	I-48
RELEASE.....	I-50

## TABLE OF CONTENTS – CONTINUED

**SECTION II - GENERAL CONDITIONS**

ARTICLE 1. DEFINITIONS .....	II-1
ARTICLE 2. STATUS OF CONTRACTOR .....	II-2
ARTICLE 3. CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY .....	II-2
ARTICLE 4. CONTRACTOR'S SUPERVISION .....	II-2
ARTICLE 5. SUBCONTRACTORS .....	II-3
ARTICLE 6. NOTICE OF TAXABLE POSSESSORY INTEREST .....	II-3
ARTICLE 7. ASSIGNMENT OF ANTITRUST ACTIONS .....	II-4
ARTICLE 8. OTHER CONTRACTS .....	II-4
ARTICLE 9. OCCUPANCY .....	II-5
ARTICLE 10. CITY'S RIGHT TO TERMINATE CONTRACT .....	II-5
ARTICLE 11. CONTRACT SECURITY – BONDS .....	II-7
ARTICLE 12. SUBSTITUTION OF SECURITIES .....	II-7
ARTICLE 13. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE .....	II-8
ARTICLE 14. WORKERS' COMPENSATION INSURANCE .....	II-9
ARTICLE 15. PROOF OF CARRIAGE OF INSURANCE .....	II-10
ARTICLE 16. DRAWINGS AND SPECIFICATIONS .....	II-10
ARTICLE 17. OWNERSHIP OF DRAWINGS .....	II-12
ARTICLE 18. DETAIL DRAWINGS AND INSTRUCTIONS .....	II-12
ARTICLE 19. SUBMITTALS .....	II-12
ARTICLE 20. LAYOUT AND FIELD ENGINEERING .....	II-13
ARTICLE 21. TESTS AND INSPECTIONS .....	II-13
ARTICLE 22. TRENCHES .....	II-14
ARTICLE 23. DOCUMENTS ON WORK .....	II-15
ARTICLE 24. STATE AUDIT .....	II-15
ARTICLE 25. SUBSTITUTIONS FOR SPECIFIED ITEMS .....	II-15
ARTICLE 26. SAMPLES .....	II-16
ARTICLE 27. PROGRESS SCHEDULE .....	II-16
ARTICLE 28. MATERIALS AND WORK .....	II-16
ARTICLE 29. INTEGRATION OF WORK .....	II-17
ARTICLE 30. OBTAINING OF PERMITS, LICENSES, AND EASEMENTS .....	II-18
ARTICLE 31. SURVEYS .....	II-18
ARTICLE 32. EXISTING UTILITY LINES; REMOVAL, RESTORATION .....	II-18
ARTICLE 33. WORK TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS .....	II-19
ARTICLE 34. ACCESS TO WORK .....	II-19
ARTICLE 35. UTILITIES .....	II-19
ARTICLE 36. CLEANING UP .....	II-20
ARTICLE 37. PATENTS, ROYALTIES, AND INDEMNITIES .....	II-20
ARTICLE 38. GUARANTEE .....	II-20
ARTICLE 39. DUTY TO PROVIDE FIT WORKERS .....	II-21
ARTICLE 40. WAGE RATES, TRAVEL, AND SUBSISTENCE .....	II-21
ARTICLE 41. HOURS OF WORK .....	II-22
ARTICLE 42. PAYROLL RECORDS .....	II-23
ARTICLE 43. APPRENTICES .....	II-24



## TABLE OF CONTENTS – CONTINUED

ARTICLE 44. LABOR – FIRST AID .....	II-26
ARTICLE 45. PROTECTION OF PERSONS AND PROPERTY.....	II-26
ARTICLE 46. NONDISCRIMINATION .....	II-27
ARTICLE 47. COST BREAKDOWN AND PERIODICAL ESTIMATES.....	II-27
ARTICLE 48. CONTRACTOR CLAIMS .....	II-28
ARTICLE 49. DISPUTES.....	II-31
ARTICLE 50. PAYMENTS .....	II-31
ARTICLE 51. CHANGES AND EXTRA WORK .....	II-33
ARTICLE 52. COMPLETION .....	II-34
ARTICLE 53. ADJUSTMENTS OF CONTRACT PRICE .....	II-34
ARTICLE 54. CORRECTION OF WORK.....	II-35
ARTICLE 55. EXTENSION OF TIME – LIQUIDATED DAMAGES .....	II-35
ARTICLE 56. PAYMENTS WITHHELD .....	II-36
ARTICLE 57. EXCISE TAXES.....	II-36
ARTICLE 58. NO ASSIGNMENT.....	II-37
ARTICLE 59. NOTICE AND SERVICE THEREOF.....	II-37
ARTICLE 60. NO WAIVER .....	II-37
ARTICLE 61. OWNER'S RIGHT TO CARRY OUT THE WORK .....	II-37
ARTICLE 62. INDEMNIFICATION.....	II-38
ARTICLE 63. HAZARDOUS MATERIALS.....	II-38
ARTICLE 64. MATERIAL SAFETY DATA SHEETS AND COMPLIANCE WITH PROPOSITION 65 .....	II-38
ARTICLE 65. NON-UTILIZATION OF ASBESTOS MATERIAL.....	II-39
ARTICLE 66. RECORDS RETENTION AND INSPECTION .....	II-40

## TABLE OF CONTENTS – CONTINUED

**SECTION III - SUPPLEMENTAL GENERAL CONDITIONS**

A. SPECIFICATIONS.....	III-1
B. CONTRACTOR'S REPRESENTATIVE.....	III-1
C. ACTIVITIES/SUBMITTALS REQUIRED PRIOR TO COMMENCEMENT OF WORK.....	III-1
D. PROJECT SCHEDULE .....	III-1
E. PRE-WORK MEETING.....	III-2
F. PERMITS AND INSPECTION FEE .....	III-2
G. CONTRACTOR SUBMITTALS .....	III-2
H. POTHOLING REQUIREMENTS .....	III-2
I. DISPOSAL OF DEBRIS.....	III-2
J. PROTECTION AND RESTORATION OF EXISTING IMPROVEMENTS.....	III-2
K. STATE OF CALIFORNIA SAFETY REQUIREMENTS .....	III-3
L. OPEN TRENCH OPERATIONS .....	III-3
M. LIQUIDATED DAMAGES.....	III-3
N. DEFINITION OF PROPOSAL ITEMS .....	III-3
O. MEASUREMENT AND PAYMENT .....	III-4
P. CONTRACTOR'S EQUIPMENT .....	III-5
Q. UTILITIES .....	III-6
R. SAFETY .....	III-7
S. EXPLOSIVES AND BLASTING.....	III-7
T. DUST ABATEMENT .....	III-7
U. RUBBISH CONTROL .....	III-7
V. SANITATION .....	III-8
W. CHEMICALS.....	III-8

## TABLE OF CONTENTS – CONTINUED

**SECTION IV- SPECIAL PROVISIONS****PART 1 – GENERAL**

4.1	SCOPE OF WORK .....	IV-1
4.2	TIME OF COMPLETION .....	IV-1
4.3	PAYMENT .....	IV-1
4.4	PERMITS AND FEES .....	IV-1
4.5	PRIORITY CONNECTIONS .....	IV-1
4.6	DATA TO BE SUBMITTED BY CONTRACTOR.....	IV-2
4.7	POTHOLING OF EXISTING UTILITIES BY CONTRACTOR .....	IV-3
4.8	PIPELINE COVER.....	IV-3
4.9	CONNECTIONS TO EXISTING WATER SYSTEM.....	IV-3
4.10	CONSTRUCTION VIDEO PHOTOGRAPHY .....	IV-4
4.11	PROTECTION OF EXISTING IMPROVEMENTS, RESTORATION OF WORK SITE AND DISPOSAL OF SPOIL AND WASTE MATERIALS.....	IV-5
4.12	GEOLOGICAL INFORMATION .....	IV-5
4.13	DEMOLITION, SALVAGE AND ABANDONMENT .....	IV-6
4.14	RESTORATION OF NON-PAVED AREAS.....	IV-6
4.15	SCHEDULE OF VALUES .....	IV-7
4.16	STORM WATER RUNOFF CONTROL PROGRAM .....	IV-7
4.17	ROCK EXCAVATION .....	IV-10
4.18	WELDING FIRE PROTECTION .....	IV-10
4.19	ADDITIONAL INSURED .....	IV-10
4.20	MISCELLANEOUS SPECIAL CONDITIONS.....	IV-11

**PART 2 – TECHNICAL SPECIFICATIONS**

4.21	PRECAST CONCRETE VAULTS.....	IV-14
4.22	ALTITUDE VALVES .....	IV-16
4.23	VALVES.....	IV-22

**APPENDIXES**

APPENDIX "A" – BID SCHEDULE

APPENDIX "B" – PUBLIC WORKS CONTRACT REQUIREMENTS FORMS

APPENDIX "C" - STANDARD DRAWINGS

PROJECT DRAWINGS (PLANS) PROVIDED UNDER SEPARATE COVER

**SECTION I - PROCEDURAL DOCUMENTS**

SECTION 1  
OF  
PROCEDURAL DOCUMENTS

INVITATION FOR BIDS

Bids for **PROJECT NO. 2018-07W, "ALTITUDE VALVE AT SOUTHWEST RESERVOIR"** will be received by the CITY OF BANNING ("Owner") before the time and date indicated in the "schedule of events," and then publicly opened on the city's electronic bidding website.

**SCHEDULE OF EVENTS**

This Invitation for Bids will be governed by the following tentative schedule. All dates are subject to change at the discretion of the City.:

Event	Date	Time
Invitation for Bids Released	04/###/2019	N/A
MANDATORY Pre-bid Meeting	04/23/2019	11:30am PDT
Final Questions Due	04/30/2019	Before 4:00pm PDT
Responses to Questions Released	05/03/2019	N/A
<b>Bids Due</b>	<b>05/09/2019</b>	<b>Before 4:00pm PDT</b>
Tentative City Council Meeting to Consider Awarding Contract	05/28/2019	5:00pm

The City of Banning is soliciting bids from qualified contractors to procure and install altitude valves and appurtenances at the Southwest reservoir in the City of Banning.

The bid shall include all costs for furnishing all labor, materials, tools, equipment and necessary incidentals to perform the work including, but not limited to mobilization, participation in safety meetings, coordination with the City's consultants, preparation of as-built drawings, and clean up.

Copies of the plans and specifications may be obtained on the City's electronic bidding website at <https://www.planetbids.com/portal/portal.cfm?CompanyID=33077>

Company shall be registered as vendor on the City's electronic bidding system, and listed as a Prospective Bidder for this specific project.

Bidders on this work will be required to comply with the California Labor Code Section 1410 et. seq., California Labor Code Section 1777.6, and implementing regulations concerning equal opportunity for Apprentices.

The Director of the Department of Industrial Relations has ascertained the general prevailing rate of per diem wages and the general rate for holiday and over-time work in the locality in which the work is to be performed for each craft or type of workmen needed to execute the Contract or Work as hereinafter set forth (see Labor Code 1770 et seq.). Copies of rates are on file at the office of the Owner, which copies shall be made available to review to any interested party on request. The successful Bidder shall post a copy of such determinations at the job site. Attention is called to the fact that not less than the

minimum salaries and wages shall be paid on this Project by all Contractors and Subcontractors. The Contractor will be required to pay the higher of State or Federal prevailing wage rates.

Bids are required for the entire work described herein. This contract is subject to the State contract nondiscrimination and compliance requirements pursuant to Government Code Section 12990.

The City of Banning hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in being considered for an award.

Each Bid shall be submitted on a form furnished as part of the contract Documents. All Bids shall be accompanied by cash, cashiers or certified check payable to the order of the City of Banning, amounting to ten percent (10%) of the Bid, or by a bond in said amount and payable to said Owner signed by the bidder and a corporate surety. The amount so posted shall be forfeited to the Owner if the bidder depositing the same does not, within fifteen (15) days after written notice has been mailed to bidder that the contract has awarded to such bidder, enter into a contract with the Owner.

The Contractor will be required to submit a certificate of insurance, which indemnifies the Owner for damage to any portion of the work resulting from fire, explosion, hail, lightning, flood, vandalism, malicious mischief, wind, collapse, riot, aircraft, or smoke. The Contractor will also be required to submit a Payment Bond and a Contract Performance Bond, each in the amount of one hundred (100) percent of the Contract Price, with a corporate surety approved by the Owner. All Bonds must be in the form required by the Owner (substitutions are not permitted) and the Company must be authorized to conduct/transact business in the State of California.

## PAYMENT

Progress payments will be made in cash to the Contractor in accordance with the provisions of the General Conditions and/or Specifications and on itemized estimates duly certified and approved by the Owner submitted in accordance therewith, based on labor and materials incorporated into said Work during the preceding month by the Contractor.

Payment shall not be made more often than once each thirty (30) days. Final payment shall be made thirty-five (35) days subsequent to recordation of Notice of Completion.

## SUBSTITUTION OF SECURITIES

The Contractor may, at his sole cost and expense, substitute securities equivalent to any moneys withheld by the Owner to ensure performance under the contract. Such securities shall be deposited with the Owner or with a state or federally chartered bank as escrow agent who shall pay such moneys to the Contractor upon satisfactory completion of the contract.



The Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive interest thereon, if any. Securities eligible for substitution shall include those listed in Public Contract Code Section 22300.

#### REQUIRED LICENSE CLASSIFICATION

Under Section 7059 of the Business and Professions Code, the bidder must have a license classification, which is sufficient to perform a majority of the project. The Owner has determined that a **CLASS A LICENSE** is necessary to bid this project. If the bidder is a specialty contractor, the bidder is alerted to the requirements of Business and Professions Code Section 7059.

#### PUBLIC WORKS CONTRACTOR REGISTRATION

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Pursuant to Section 1771.1 of the Labor Code, no contractor or subcontractor shall be qualified to bid on, be listed in a bid proposal (submitted on or after March 1, 2015), or engage in the performance of any contract for public work unless currently registered with the Department of Industrial Relations to perform public work pursuant to Section 1725.5 of the Labor Code. *It shall not be a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Sections 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.*

No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

Bidders and their subcontractors listed in the bid documents must provide an extract (pdf) at time of bid showing active registration from the Public Works Contractor Registration online registration at <https://efiling.dir.ca.gov/PWCR/Search>.

All contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement). Additionally, the awarded Contractor shall submit certified payroll records to the City.

#### AWARD AND EXECUTION

The award of contract, if made, will be within forty-five (45) calendar days from the date of the bid opening.

The Contractor shall execute the Contract within fifteen (15) calendar days after he has been notified in writing of the award.

The owner hereby reserves the right to reject any and all proposals, to waive any irregularity, award any combination of schedules and to award the contract to the lowest responsive and responsible bidder. In case the lowest bid proposal is higher than the

Engineer's estimate, the owner reserves the right to negotiate a contract with the lowest responsive and responsible bidder. No bidder may withdraw his bid for a period of forty-five (45) calendar days after the bid opening.

**Mandatory pre-bid meeting will be conducted on Tuesday April 23, 2019 at 10:00 a.m. at 99 E. Ramsey, Banning, CA 92220.** The meeting will be an opportunity for prospective bidders to verify existing conditions and quantities for this project.

SECTION 1.2  
OF  
PROCEDURAL DOCUMENTS

INSTRUCTIONS TO BIDDER

The Final day for submission of bids shall be on or before the due date indicated in the schedule of events section.

Companies shall register on the City's Electronic Bidding System, <http://www.planetbids.com/portal/portal.cfm?CompanyID=33077>. Once registered, Companies must download the IFB by clicking "Place eBid" while logged in under their own name and identification number to appear on the Current Prospective Bidders List as a "Prospective Bidder." Companies that fail to download the IFB by clicking "Place eBid" will not appear on the Current Prospective Bidders List and their bid responses will be considered non-responsive. If a Company is unable to register or download the IFB from the bidding website, a representative may contact Planet Bids at (818) 992-1771.

All bids and supplementary documents must be uploaded using the City's bidding website prior to event date and time as instructed in this solicitation. Once the file(s) has been uploaded and the Submission Status shows as "Submitted" the submission is complete. At that point respondents will receive an email confirmation from the bidding website.

The City reserves the right to reject any and all bids and to waive information and minor irregularities in any bid received.

Acceptance of Terms and Conditions - Submission of a bid pursuant to this IFB shall constitute acknowledgment and acceptance of all terms and conditions hereinafter set forth in this IFB.

The time and date are fixed, and extensions will not be granted unless specifically stated by the City in an addendum to this IFB. Bids not received before the bid event time will not be accepted.

- a. Addenda: Addenda alerts are sent out immediately via email to all subscribers. All addenda, if any, must be acknowledged by the vendor electronically via the electronic bidding website as part of your bid response before the deadline. Failure to acknowledge an addendum, unless the requirement to acknowledge has been waived, will immediately cause your bid to be deemed non-responsive.

All Bids must be made on the required Bid form (Section 1.3). All blank spaces for Bid prices must be filled in, and the Bid form must be fully completed and executed when submitted.

The Owner may waive any informalities or minor defects or reject any and all Bids. Any Bid may be withdrawn prior to the above scheduled time for the opening of Bids or authorized postponement thereof. No Bidder may withdraw a Bid within forty-five (45) calendar days after the actual date of the opening thereof. Should there be reasons why the contract cannot be awarded within the specified period; the time may be extended by mutual agreement between the Owner and the Bidder.

Bidders must satisfy themselves of the character of the work to be performed by examination of the site and review of the Contract Documents, including Addenda. *After Bids have been submitted, the Bidder shall not assert that there was a misunderstanding concerning the nature of the work to be done.*

The plans and specifications are hereby made a part of this contract.

If prior to the date fixed for submission of bids, a prospective Company discovers any ambiguity, conflict, discrepancy, omission or other errors in this bid package or any of its appendices or exhibits, the Company shall immediately notify the City of such error in writing and request modification or clarification of the document. Modifications shall be made by written Addenda to the bid.

If a Company fails to notify the City, prior to the date fixed for submissions of bids, of an error in the bid package known to the Company, or an error that reasonably should have been known to the Company, the Company shall submit its bid at its own risk, and if the Company is awarded a Contract, it shall not be entitled to additional compensation or time by reason of the error or its later correction.

All requests for clarifications, changes, exceptions, deviations to the terms and conditions set forth in this bid package must be submitted via the City's electronic bidding website project "Q&A Tab" on the PlanetBids Vendor Portal at <https://www.planetbids.com/portal/portal.cfm?CompanyID=33077>.

The Final day for receipt of questions from bidders shall be on or before the date indicated in the schedule of events. To ensure fairness and avoid misunderstandings, all communications must be in electronic format and submitted via the City's electronic bidding website. Any verbal communications will not be considered or responded to. All questions received by the due date will be logged and reviewed and if required, a response will be provided via an addendum to the bid package that will be posted on the City's website. Any communications, whether written or verbal, with any City Councilmember or City staff with regards to project details and scope prior to award of a contract by City Council is strictly prohibited and the bidder shall be disqualified from consideration.

For technical assistance using the City's electronic bidding website, please contact Purchasing Division at 951-922-3151.

The owner shall provide to Bidders prior to Bidding, all information that is pertinent to, and delineates and describes, the land owned and rights-of-way acquired or to be acquired.

The Contract Documents contain the provisions required for the construction of the Project. Information obtained from an officer, agent, or employee of the Owner or any



other person shall not affect the risks or obligations assumed by the Contractor or relieve him from fulfilling any of the conditions of the Contract.

Each Bid shall be submitted on a form furnished as part of the Contract Documents. All Bids shall be accompanied by cash, cashier's or certified check payable to the order of the "City of Banning" amounting to ten percent (10%) of the bid, or by a bond in said amount and payable to the Owner, signed by the bidder and a corporate surety, or by the bidder and two sureties who shall justify before any officer competent to administer an oath, in double said amount and over and above all statutory exemptions. If Contractor is submitting a Bid Bond, the Bid Bond shall be fully executed and submitted electronically through the City's electronic bidding system with the rest of the bid documents prior to the bid event time. ONLY if contractor is submitting cash, or cashier's check should it be hand delivered and timestamped by the City before the bid event time. The amount so posted shall be forfeited to the Owner in case the bidder depositing the same does not, within fifteen (15) days after written notice has been mailed to Bidder that the contract has been awarded to such bidder, enter into a contract with the Owner.

Bonds must be in the form required by the Owner (substitutions are not permitted) and the company must be authorized to conduct/transact business in the State of California.

The Contractor will be required to submit a Payment Bond and a Contract Performance Bond (on the required form), in the amount of 100% of the Contract Price, with a corporate surety approved by the Owner.

The Contractor may, at his sole cost and expense, substitute securities equivalent to any moneys withheld by the Owner to ensure performance under the contract. Such securities shall be deposited with the Owner or with a state or federally chartered bank as escrow agent who shall pay such moneys to the Contractor upon satisfactory completion of the contract.

The Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive interest thereon, if any. Securities eligible for substitution shall include those listed in Public Contract Code Section 22300.

Attorneys-in-fact who sign Bid Bonds or Payment Bonds and Contract Performance Bonds must file with each Bond a certified and effective dated copy of their power of attorney.

The party to whom the Contract is awarded will be required to execute the Agreement and submit the Payment Bond, Contract Performance Bond, and Insurance Certificates on the required forms within fifteen (15) calendar days from the date when Notice of Award is delivered to the Bidder.

The Notice of Award shall be accompanied by the necessary Agreement, Bond, and Insurance Certificate forms. In case of failure of the bidder to execute the Agreement, the Owner may at his option consider the bidder in default; in which case the Bid Bond accompanying the proposal shall become the property of the Owner.

The Owner, within fifteen (15) days of receipt of acceptable Payment Bond, Contract Performance Bond, Insurance Certificates, and Agreement signed by the party to whom the Contract was awarded, shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the Owner not execute the Agreement within such period, the Bidder may by Written Notice withdraw his signed Agreement. Such notice of Withdrawal shall be effective upon receipt of the notice by the Owner.

The Notice to Proceed shall be issued within ten (10) days of the execution of the agreement by the Owner. Should there be reasons why the Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement between the Owner and Contractor. If the Notice to Proceed has not been issued within the above-specified period or within the period mutually agreed upon, the contractor may terminate the Agreement without further liability on the part of either party.

The Owner may make such investigations as he deems necessary to determine the ability of the Bidder to perform the work, and the Bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any Bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the Owner that such Bidder is properly qualified to carry out the obligation of the Agreement and to complete the Work contemplated therein.

A conditional or qualified Bid will not be accepted. Award, if made, will be made to the lowest responsive and responsible Bidder, as determined by the Owner.

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the Project shall apply to the Contract throughout.

Each Bidder is responsible for inspecting the site(s) and for reading and being thoroughly familiar with the Contract Documents. The failure or omission of any Bidder to do any of the foregoing shall in no way relieve any Bidder from any obligation in respect to his Bid.

All Bidders shall supply the names and addresses of major material suppliers, subcontractors and references as required as set forth in the Bid.

#### FILING OF BID PROTESTS

Bidders may file a "protest" of a contract award with the OWNER's Director of Public Works. In order for Bidder's protest to be considered valid, the protest must;

- Be filed timely and in writing (as detailed in this Section).
- Clearly identify the specific accusation involved.
- Clearly identify the specific OWNER City Council recommendation being protested.
- Specify in detail, the grounds of the protest and the facts supporting the protest.
- Include all relevant, supporting documentation with protest at time of filing.

If the protest regarding the recommend award of a contract solicited by the Request for Proposal must be filed in writing with the OWNER within five (5) Calendar Days after the bid opening date.



If the protest is valid, the OWNER'S Director of Public Works, or other designated OWNER staff member, shall review the basis of the protest and all relevant information. The Director of Public Works will deny or concur with the protest and provide a written decision to the protestor. The protestor may appeal the decision of the Director of Public Works to the Deputy City Manager with 3 days of Notification thereof.

SECTION 1.3  
OF  
PROCEDURAL DOCUMENTS  
BIDDER INFORMATION

DATE: \_\_\_\_\_

BIDDER'S NAME, ADDRESS & PHONE

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

STATE CONTRACTOR'S LIC. NO. \_\_\_\_\_ CLASS OF LICENSE: \_\_\_\_\_

EXPIRATION DATE: \_\_\_\_\_

Name on license must agree with company listed above

DIR Registration Number: \_\_\_\_\_

CITY BUSINESS TAX REGISTRATION (if available): \_\_\_\_\_

IS BIDDER A CERTIFIED DBE: Y N (Circle one)

Bidder hereby certifies that Bidder is currently the holder of a valid license as a Contractor in the State of California, and that the license covers the proposed work. When the appropriateness of a particular license is in question, Bidder understands that the determination of the State of California, Department of Consumer Affairs, Contractors State License Board shall govern. These terms and conditions shall also apply to any subcontractors listed by Bidder.

Bidder is: (check one)

An Individual Owner \_\_\_\_\_

A Joint Venture \_\_\_\_\_

A Partnership \_\_\_\_\_

A Corporation \_\_\_\_\_

The Bidder shall be required to provide a signed copy of the following documents to the Purchasing Department prior to bid opening in electronic format as described herein:

- **ALL Procedural Documents in Sections 1.3 and 1.4**
- **Public Works Contract Requirements forms 1-5 (See Appendix)**

## BID FORM

Proposal of \_\_\_\_\_,  
 hereinafter called "bidder", organized and existing under the laws of the State of  
 California, doing business as \_\_\_\_\_.

\* insert "a corporation", "a partnership", or "an individual", as applicable.

To the CITY OF BANNING, hereinafter called "Owner":

In compliance with your Invitation for Bids and Instruction to Bidders, Bidder hereby proposes to perform all work for the **PROJECT NO. 2018-07W, "ALTITUDE VALVE AT SOUTHWEST RESERVOIR"** in strict accordance with the Contract Documents, within the time set forth therein, and at the prices stated below.

By submission of this Bid, the Bidder certifies, and in the case of a joint Bid each party thereto certifies as to his own organization that this Bid has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this Bid with any other Bidder or with any competitor.

Bidder hereby agrees that the Owner shall have a period of forty-five (45) calendar days after opening of bids within which to accept or reject the bids.

Bidder agrees to commence work under this contract on or before a date to be specified in the Notice to Proceed and to fully complete the contract within a total of **NINETY (90) working days** thereafter.

Bidder agrees that if the project is not fully completed within said time, he shall pay as liquidated damages, the sum of **\$1,000.00** for each calendar day thereafter as provided in the General Conditions, and that this amount shall be presumed to be the amount of damages sustained by Owner in the event of such a breach by Bidder, as it would be impractical or extremely difficult to fix the actual damage.

## EX PARTE COMMUNICATIONS CERTIFICATION

Please indicate by signing below one of the following two statements. **Only sign one statement.**

I certify that Proposer and Proposer's representatives have not had any communication with a City Councilmember concerning this IFB at any time after the date and time that this IFB was publically advertised.

---

**OR**

I certify that Proposer or Proposer's representatives have communicated after the date and time that this IFB was publically advertised with a City Councilmember. A copy of all such communications is attached to this form for public distribution.

---

## DISQUALIFICATIONS QUESTIONNAIRE

The Contractor shall complete the following questionnaire:

Has the Contractor, any officer of the Contractor, or any employee of the Contractor who has proprietary interest in the Contractor, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

Yes \_\_\_\_\_ No \_\_\_\_\_

If the answer is yes, explain the circumstances in the following space.

## DISCLOSURE OF GOVERNMENT POSITIONS

Each Proposer shall disclose below whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months. List below or state "None."



## NON COLLUSION AFFIDAVIT

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_,

being first duly sworn, the party making the

(Name of Bidder)

foregoing bid; that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

\_\_\_\_\_  
(Signature)\_\_\_\_\_  
(Typed Name)

SUBSCRIBED BEFORE ME on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

My commission Expires:

\_\_\_\_\_

## BIDDER ACKNOWLEDGEMENT

There is enclosed herewith bid security or bond in the following form (check one):

- ☐ Cash (10%)
- ☐ Cashier's Check or Certified Check (10%)
- ☐ Bond - 1 Surety (10%)

in the sum of \_\_\_\_\_ (\_\_\_\_) percent of the base bid of \_\_\_\_\_ (\$ \_\_\_\_\_), made payable to the order of the City of Banning, and the undersigned agrees that in case of his failure to execute the necessary Contract and furnish the required bonds and insurance certificates, the cashier's check or surety bond and the money payable thereon shall be and remain the property of the CITY OF BANNING.

### WITHDRAWAL OF BID

The Bidder agrees that this Bid shall be good and may not be withdrawn for a period of forty-five (45) calendar days after the scheduled closing time for receiving Bids.

### VISITING THE SITE

The undersigned has thoroughly examined the Drawings and Specifications and Addenda (if any), has visited the site, and is thoroughly familiar with the contents and all of the conditions thereof. The undersigned is aware of and will observe all security regulations enforced at this facility.

### DESIGNATION OF SUBCONTRACTORS

In compliance with the provisions of Section 4100 - 4108 of the Public Contract Code of the State of California, and any amendments thereto, each Bidder shall set forth below, the name and location of the mill, shop, or office of each subcontractor who will perform work or labor, or render service to the Contractor in an amount in excess of one-half ( $\frac{1}{2}$ ) of one (1) percent of the total Bid to be performed under the Contract, he shall be deemed to have agreed to perform such portion himself and he shall not be permitted to subcontract that portion of the work except under conditions permitted by law.

### LIST OF SUBCONTRACTORS

Subletting or subcontracting of any portion of the work as to which no subcontractor was designated in the original Bid shall only be permitted in case of public emergency or necessity, or otherwise permitted by law, and then only after a finding reduced to writing as a public record of the Owner.

In compliance with the provisions of Sec. 4100-4111, inclusive, of the Public Contract Code of the State of California, and any amendments thereof, each bidder shall set forth below: (a) The name and the location of the place of business of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement in an amount in excess of one-half of one percent ( $\frac{1}{2}$  of 1%)

of the Contractor's total bid;(b) the portion of the work which will be done by each such subcontractor; and (c) the subcontractors contractor license number. If this information is not provided with the bid, the City may deem the bid non-responsive.

Each subcontractor shall possess, both at the time the bid is submitted and at all times when work is performed, a valid contractor's license for the appropriate classification necessary to perform the work for which that subcontractor is listed.

If the Contractor fails to specify a subcontractor for any portion of the work to be performed under the contract in excess of one-half of one percent ( $1/2$  of 1%) of the Contractor's total bid, he agrees that he is fully qualified to perform that work himself, and that he shall perform that work himself, and that he shall perform that portion himself.

If the Contractor violates any of the provisions of this section, it is deemed to have violated and breached this contract, and the City may exercise the option in its own discretion of: (1) canceling the contract; or (2) assessing the contract or a penalty in an amount of not more than ten percent (10%) of the amount of the subcontract involved, and this penalty shall be deposited in the fund out of which the prime contract is awarded. The Contractor shall be entitled to a public hearing in five (5) days notice of the time and place of the hearing.

## LIST OF SUBCONTRACTORS

NAME:	License No: Classification:	DBE/MBE __Yes __No
ADDRESS:	Telephone: Fax:	Ownership (Circle One) Minority Women Not Applicable
City, Zip:	Bid Item No.	% of Total bid

NAME:	License No: Classification:	DBE/MBE __Yes __No
ADDRESS:	Telephone: Fax:	Ownership (Circle One) Minority Women Not Applicable
City, Zip:	Bid Item No.	% of Total bid

NAME:	License No: Classification:	DBE/MBE __Yes __No
ADDRESS:	Telephone: Fax:	Ownership (Circle One) Minority Women Not Applicable
City, Zip:	Bid Item No.	% of Total bid

## LIST OF SUBCONTRACTORS - cont.

NAME:	License No: Classification:	DBE/MBE __Yes __No
ADDRESS:	Telephone: Fax:	Ownership (Circle One) Minority Women Not Applicable
City, Zip:	Bid Item No.	% of Total bid

NAME:	License No: Classification:	DBE/MBE __Yes __No
ADDRESS:	Telephone: Fax:	Ownership (Circle One) Minority Women Not Applicable
City, Zip:	Bid Item No.	% of Total bid

NAME:	License No: Classification:	DBE/MBE __Yes __No
ADDRESS:	Telephone: Fax:	Ownership (Circle One) Minority Women Not Applicable
City, Zip:	Bid Item No.	% of Total bid

LIST OF MATERIAL SUPPLIERS

NAME:	MATERIAL(S) TO BE SUPPLIED	
ADDRESS:	Telephone:	Ownership (Circle One) Minority Women Not Applicable
City, Zip:	Bid Item No.	% of Total bid

NAME:	MATERIAL(S) TO BE SUPPLIED	
ADDRESS:	Telephone:	Ownership (Circle One) Minority Women Not Applicable
City, Zip:	Bid Item No.	% of Total bid

NAME:	MATERIAL(S) TO BE SUPPLIED	
ADDRESS:	Telephone:	Ownership (Circle One) Minority Women Not Applicable
City, Zip:	Bid Item No.	% of Total bid



## LIST OF MATERIAL SUPPLIERS - cont.

NAME:	MATERIAL(S) TO BE SUPPLIED	
ADDRESS:	Telephone:	Ownership (Circle One) Minority Women Not Applicable
City, Zip:	Bid Item No.	% of Total bid

NAME:	MATERIAL(S) TO BE SUPPLIED	
ADDRESS:	Telephone:	Ownership (Circle One) Minority Women Not Applicable
City, Zip:	Bid Item No.	% of Total bid

NAME:	MATERIAL(S) TO BE SUPPLIED	
ADDRESS:	Telephone:	Ownership (Circle One) Minority Women Not Applicable
City, Zip:	Bid Item No.	% of Total bid

## LIST OF MANUFACTURERS

The Contractor shall submit this sheet with his Bid, completed, to list the manufacturers of materials he intends to use. It shall be understood that where the Contractor elects not to use the material manufacturers called for in the Specifications he will substitute only items of equal quality, durability, functional character and efficiency as determined by the Engineer. The Contractor should ascertain prior to bidding the acceptability of substitutes. Only one manufacturer shall be listed for each item.

<u>Item or Material</u>	<u>Manufacturer</u>
<u>Altitude Valves</u>	<u></u>
<u>Electronic Valve Controller</u>	<u></u>
<u>Butterfly Valves</u>	<u></u>
<u>Air Vacuum and Air Release Valves</u>	<u></u>
<u>Precast Vaults</u>	<u></u>
<u>Access Hatches</u>	<u></u>
<u>Steel Pipe and Fittings</u>	<u></u>

No change shall be allowed of any material manufacturer listed above after receipt of Bids unless the manufacturer so listed cannot furnish materials meeting the Specifications. Should such change be allowed, there will be no increase in the amount of the Bid originally submitted.

ANTI-TRUST CLAIM

In submitting a Bid to a public purchasing body, the Bidder offers and agrees that if the Bid is accepted, it will assign to the purchasing body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, materials, or services by the Bidder for sale to the purchasing body pursuant to the Bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the Bidder.

DECLARATION OF ACCURACY

I, the undersigned, declare under penalty of perjury that the information presented in this bid, including without limitation the Contractor's license number and expiration date, are true and correct to the best of my knowledge. The bid of any Bidder not signed by the Bidder, or not containing the Bidder's license number and license expiration date, or containing information which is subsequently proven false, shall be considered non-responsive and shall be rejected.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Title

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Date

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Contractor's License No.

\_\_\_\_\_  
Type of License

\_\_\_\_\_  
Federal ID No. (If applicable)

\_\_\_\_\_  
Expiration Date of License

(SEAL - if Bid is by a corporation)

ATTEST

CERTIFICATION  
LABOR CODE - SECTION 1861

I, the undersigned Contractor, am aware of the provisions of Section 3700 et. Seq. of the Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I, the undersigned Contractor, agree to and will comply with such provisions before commencing the performance of the Work of this Contract.

Contractor agrees to utilize federal job classifications for the submittal of the certified payrolls and further agrees to pay all of its employees the higher of the prevailing State or Federal wages.

CONTRACTOR:

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
By

\_\_\_\_\_  
Title

## QUESTIONNAIRE REGARDING BIDDERS

Number of years engaged in the contracting business under present business name

\_\_\_\_\_.

List of at least the last three contracts performed which show experience in working on a project of a nature similar to that covered in this proposal. If none, so indicate. Attach separate list of references if necessary.

Year	Type of Work	Contract Amt.	Location	Contact person/phone
1				
2				
3				
4				
5				
6				
7				

State of California Contractor's License No.: \_\_\_\_\_

Contractor's License Expiration Date:

\_\_\_\_\_

SECTION 1.4  
OF  
PROCEDURAL DOCUMENTS

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are hereby held and firmly bound unto the CITY OF BANNING as Owner in the penal sum of \_\_\_\_\_ for payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed, this \_\_\_\_\_ day of \_\_\_\_\_, 2019. The Condition of the above obligation is such that whereas the Principal has submitted to the CITY OF BANNING a certain Bid, attached hereto and hereby made a part hereof to enter into a contract in writing for the

**PROJECT NO. 2018-07W, "ALTITUDE VALVE AT SOUTHWEST RESERVOIR"**

NOW, THEREFORE,

- A. If said Bid shall be rejected, or
- B. If said Bid shall be accepted and the Principal shall execute and deliver, within fifteen (15) days after the Notice of Award, a contract in the form attached hereto (properly completed in accordance with said Bid) and shall furnish a Bond for his faithful performance of said Contract and for the payment of all persons performing labor or furnishing materials in connection therewith, the required Insurance Certificates, and shall in all other respects perform the agreement created by the acceptance of said Bid, then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims there under shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligation of said Surety and its Bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorney's fee to be fixed by the court.



IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Two Witnesses  
(If Individual):

\_\_\_\_\_

\_\_\_\_\_

Principal: \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

ATTEST (If Corporation):

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

SURETY: \_\_\_\_\_

By: \_\_\_\_\_

Title \_\_\_\_\_

ATTEST:

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

IMPORTANT: Surety companies executing Bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in Section 105 of the California Insurance code.

Any claims under this bond may be addressed to:

(Name and Address of Surety) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name and address of Agent or  
Representative in California, if  
different from above) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Telephone number and address  
of Surety and Agent or  
Representative in California) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION 1.5  
OF  
PROCEDURAL DOCUMENTS  
AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between the CITY OF BANNING, hereinafter called "Owner", and \_\_\_\_\_ doing business as \_\_\_\_\_ hereinafter called "Contractor".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, it is agreed that:

1. The Contractor will commence and complete the **PROJECT NO. 2018-07W, "ALTITUDE VALVE AT SOUTHWEST RESERVOIR"** as per the plan and specifications.
2. The Contractor will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the Project described herein.
3. The Contractor will commence the Work required by the Contract Documents on or before the date specified to commence Work in the Notice to Proceed and will complete the same within **90 Working Days** unless the period for completion is extended otherwise by the Contract Documents.
4. Owner and Contractor have discussed the provisions of Civil Code 1671 and the damages, which may be incurred by Owner if the Work is not completed within the time specified in this Agreement. Owner and Contractor hereby represent that at the time of signing this Agreement, it is impractical and extremely difficult to fix the actual damage which will be incurred by owner if the Work is not completed within the number of working days allowed.
5. The Contractor hereby acknowledges that the plans and specifications are made as a part of this contract.
6. The Contractor agrees to perform all of the Work described in the Contract Documents and comply with the terms therein for the sum of \$ \_\_\_\_\_ or as shown in the Notice of Award; subject to additions and deductions, if any, in accordance with said documents. Payment shall not be made more often than once each thirty (30) days. Final payment shall be made thirty-five (35) days subsequent to recordation of Notice of Completion. Contractor may, at his sole cost and expense, substitute securities equivalent to any moneys withheld by the Owner to ensure performance under the contract. Such securities shall be deposited with the Owner or with a state or federally chartered bank acceptable to owner as escrow agent who shall pay such moneys to the Contractor upon satisfactory completion of the contract. The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any

interest thereon. Securities eligible for substitution shall include those listed in Public Contract Code Section 22300.

7. The term "Contract Documents" means and includes the following:
  - a. Invitation for Bids – Section I
  - b. Instruction to Bidders
  - c. Bid
  - d. Bid Bond
  - e. Agreement
  - f. Payment Bond
  - g. Contract Performance Bond
  - h. Certificates of Insurance and Endorsements
  - i. Notice of Award
  - j. Notice to Proceed
  - k. Change Orders
  - l. Section II - General Conditions
  - m. Section III - Supplemental General Conditions
  - n. Section IV - Special Provisions, Standard Drawings and Details
  - o. Drawings and specifications prepared by the City of Banning or consultant
  - p. Addenda:
 

No. \_\_\_\_\_, dated \_\_\_\_\_, 2019

No. \_\_\_\_\_, dated \_\_\_\_\_, 2019

No. \_\_\_\_\_, dated \_\_\_\_\_, 2019

No. \_\_\_\_\_, dated \_\_\_\_\_, 2019
8. The owner will pay to the Contractor in the manner and at such times as set forth in the General Conditions such amounts as required by the Contract Documents.
9. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.
 

Should any litigation or arbitration be commenced between the parties hereto concerning said project, any provisions of this Contract, or the rights and obligations of either in relation thereto the party, Owner or Contractor, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for his attorney's fees in such litigation, and court costs.
10. Pursuant to Section 1770 et. seq., the following, of the California Labor Code, the successful bidder shall pay not less than the higher of State or Federal prevailing rate of per diem wages. The owner has obtained the State Prevailing wage rates from the California Department of Industrial Relations. Copies of such prevailing rate of per diem wages are on file at the office of the owner, which copies shall be made available for review to any interested party on request.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in copies each of which shall be deemed an original on the date first above written.

OWNER:  
CITY OF BANNING

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Please Type  
Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Please Type  
Title: \_\_\_\_\_

CONTRACTOR:

(SEAL)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Please Type  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contractor's License No. \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Please Type  
Title: \_\_\_\_\_

All signatures on this Contract Agreement on behalf of the Contractor must be acknowledged before a Notary Public. In the event that the Contractor is a corporation, the President/Vice President and the corporate secretary of the corporation must sign and the corporate seal must be affixed thereto.

## CORPORATE CERTIFICATE

I, \_\_\_\_\_, certify that I am the Corporate Secretary of the  
 \_\_\_\_\_ Corporation named as CONTRACTOR  
 in the foregoing contract; that \_\_\_\_\_, who signed said  
 contract on behalf of the CONTRACTOR was then \_\_\_\_\_ of  
 said corporation; and that said contract was duly signed for and in behalf of said  
 corporation by authority of its governing body and is within the scope of its corporate  
 powers.

Name: \_\_\_\_\_

(SEAL)

ATTEST:

\_\_\_\_\_

Name \_\_\_\_\_  
 (Please Print)

Title \_\_\_\_\_



SECTION 1.6  
OF  
PROCEDURAL DOCUMENTS

PAYMENT BOND  
(CALIFORNIA PUBLIC WORK)

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the City of Banning (referred to hereinafter as "Obligee") has awarded to \_\_\_\_\_ (hereinafter designated as the "Contractor") a contract dated \_\_\_\_\_, for work described as follows:

**PROJECT NO. 2018-07W, "ALTITUDE VALVE AT SOUTHWEST RESERVOIR"**  
(hereinafter referred to as the "Public Work Contract"); and

WHEREAS said Contractor is required to furnish a bond in connection with said Public Work Contract, and pursuant to Section 3247 of the California Civil Code;

NOW, THEREFORE, we \_\_\_\_\_, the undersigned Contractor, as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the CITY OF BANNING and to any and all persons, companies or corporation entitled to file stop notices under Section 3181 of the California Civil Code in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), said sum being not less than 100 percent of the total amount payable by the said obligee under the terms of the said Public Work Contract, for which payment will and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if said Contractor, his or its heirs, executors, administrators, successors or assigns, or Subcontractors, shall fail to pay for any materials, provisions, vendor or other supplies or teams, implements or machinery used in, upon, for or about the performance of the Public Work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of said Contractor and his Subcontractors pursuant to Section 18806 of the Revenue and Taxation Code with respect to such work and labor as required by the provisions of Section 3247 through 3252 of the Civil Code, the Surety or Sureties hereon will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, the said Surety or Sureties will pay a reasonable attorney's fee to be fixed by the Court. In addition to the provisions herein above, it is agreed that this bond will inure to the benefit of any and all persons, companies and corporations entitled to serve stop notices under

Section 3181 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the said Public Work Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

No final settlement between the Obligee and the Contractor hereunder shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

PRINCIPAL: \_\_\_\_\_

By: \_\_\_\_\_

SURETY: \_\_\_\_\_

By: \_\_\_\_\_  
Attorney-in-fact

IMPORTANT: Surety companies executing Bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in Section 105 of the California Insurance Code.



SECTION 1.7  
OF  
PROCEDURAL DOCUMENTS  
  
CONTRACT PERFORMANCE BOND  
(CALIFORNIA PUBLIC WORK)

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the \_\_\_\_\_ (referred to hereinafter as "Obligee") has awarded to \_\_\_\_\_ hereinafter designated as the "Contractor") a contract dated \_\_\_\_\_, for work described as follows:

**PROJECT NO. 2018-07W, "ALTITUDE VALVE AT SOUTHWEST RESERVOIR"** (hereinafter referred to as the "Public Work Contract"); and WHEREAS, the Contractor is required by said Public Work Contract to perform the terms thereof and to provide a bond both for the performance and guaranty thereof.

NOW, THEREFORE, we \_\_\_\_\_  
,  
the undersigned Contractor, as Principal, and \_\_\_\_\_, a  
corporation organized and existing under the laws of the State of \_\_\_\_\_  
, and duly authorized to transact business under the laws of the State of California, as  
Surety, are held and firmly bound unto the CITY OF BANNING in the sum of \_\_\_\_\_  
Dollars (\$ \_\_\_\_\_), said  
sum being not less than 100 percent of the total amount payable by the said obligee under  
the terms of the said Public Work Contract, for which amount well and truly to be made,  
we bind ourselves, our heirs, executors and administrators, successors and assigns,  
jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the bounden Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the said Public Work Contract and any alteration thereof made as therein provided, on his or its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill the one-year guarantee of all materials and workmanship; and indemnify and save harmless the Oblige, its officers and agents, as stipulated in said Public Work Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect. In case suit is brought upon this bond, the said Surety will pay to oblige a reasonable attorney's fee to be fixed by the Court.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the said Public Work Contract or to the work to be performed there under or the Specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any

such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

No final settlement between the Obligee and the Contractor hereunder shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

PRINCIPAL:

\_\_\_\_\_

By \_\_\_\_\_

SURETY:

\_\_\_\_\_

By \_\_\_\_\_

Attorney-in-fact

The rate of premium on this bond is \_\_\_\_\_ per thousand.

The total amount of premium charged, \$ \_\_\_\_\_. (The above must be filled in by corporate surety.)

**IMPORTANT:** Surety companies executing Bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in Section 105 of the California Insurance Code.





SECTION 1.8  
OF  
PROCEDURAL DOCUMENTS

INDEMNITY AND INSURANCE STATEMENT

Summary of Indemnity and Insurance Requirements

1. These are the Indemnity and Insurance Requirements for Contractors providing services or supplies to the City. By agreeing to perform the work or submitting a proposal, you verify that you comply with and agree to be bound by these requirements. If any additional contract documents are executed, the actual Indemnity language and Insurance Requirements may include additional provisions as deemed appropriate by the City.
2. You should check with your Insurance advisors to verify compliance and determine if additional coverage or limits may be needed to adequately insure your obligations under this agreement. These are the minimum required and do not in any way represent or imply that such coverage is sufficient to adequately cover the Contractor's liability under this agreement. The full coverage and limits afforded under Contractor's policies of insurance shall be available to the City and these Insurance Requirements shall not in any way act to reduce coverage that is broader or includes higher limits than those required. The Insurance obligations under this agreement shall be: 1 – all the Insurance coverage and limits carried by or available to the Contractor; or 2 – the minimum Insurance Requirements shown in this agreement, whichever is greater. Any insurance proceeds in excess of the specified minimum limits and coverage required, which are applicable to given loss, shall be available to the City.
3. Contractor shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to the City before work begins. The City reserves the right to require full-certified copies of all Insurance coverage and endorsements.

**I. INDEMNIFICATION**

To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of

Contractor, its officers, agents, servants, employees, subcontractors, materialmen, Contractors or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith. Contractor shall agree that their defense and indemnification obligations are in addition to, and are not limited by, the Insurance obligations in the agreement.

Contractor shall pay all required taxes on amounts paid to Contractor under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor shall indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

Contractor shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. If Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, Contractors or their officers, agents, servants or employees (or any entity or individual that Contractor's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

## II. INSURANCE

The City of Banning will require the following to approve insurance for your contract:

### 1) Insurance Limits:

(a) General Liability insurance with limits of not less than \$1,000,000 for bodily injury and property damage; \$1,000,000 for personal and advertising injury; \$2,000,000 products and completed operations aggregate and \$2,000,000 general aggregate.

(b) Auto Liability insurance endorsed for "any auto" with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

(c) Professional Liability (Errors and Omissions) insurance appropriate to Consultant's profession, with limits of liability of not less than \$1,000,000 per claim/occurrence and \$1,000,000 policy aggregate. The "Retro Date" must be shown for the Professional Liability insurance. **(only required if contract involves the rendering of a professional service).**

(d) Workers' Compensation insurance as required under the California Labor Code.

(e) Employer's Liability insurance with limits of liability of not less than \$1,000,000, each accident; \$1,000,000 disease each employee; and \$1,000,000 disease policy limit.

\*Limits can be adjusted by the City based on services provided.

## 2.) Insurance Requirements:

(a) California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide.

(b) Certificate holder should appear as follows:

City of Banning  
Attn: Purchasing Division  
99 E. Ramsey Street  
Banning, CA 92220-4837

(c) The certificate of insurance should read "*The City of Banning, its officers, officials, employees and agents are additional insured with respects to General Liability and Auto Liability insurance. This insurance is primary, and our obligations are not affected by any other insurance carried by such additional insured whether primary, excess, contingent, or on any other basis. Waiver of subrogation for Workers' Compensation insurance with respects to the City of Banning, its officers, officials, employees and agents.*"

(d) The additional insured coverage under the contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

### 3.) Insurance Documents:

(a) Include an Additional insured endorsement, with primary and non-contributory language or a primary insurance endorsement, for General Liability insurance **including ongoing operations and completed operations (i.e., CG 20 10, CG 20 33, or CG 20 38)**. The additional insured should read, "*The City of Banning, its officers, officials, employees, agents and volunteers*". Examples of primary insurance language are "*Such insurance as is afforded by the policy is primary and any other insurance shall be excess and not contribute to the insurance afforded by this endorsement*" or "*This insurance is primary, and our obligations are not affected by any other insurance carried by such additional insured whether primary, excess, contingent, or on any other basis*". The endorsement number needs to be included in the accord description of certificate of insurance.

(b) Include an Additional insured endorsement for Auto Liability insurance. The additional insured should read, "*The City of Banning, its officers, officials, employees and agents.*" The endorsement number needs to be included in the accord description of certificate of insurance.

(c) Include a Waiver of subrogation endorsement for Workers' Compensation insurance should read, "*the City of Banning, its officers, officials, employees and agents.*" The endorsement number needs to be included in the accord description of certificate of insurance.

(d) Include a copy of the Declarations & Policy Endorsements page for the GL policy.

**I have read and understood the above requirements and agree to be bound by them for any work performed for the city.**

Authorized signature: \_\_\_\_\_

Date: \_\_\_\_\_

SECTION 1.9  
OF  
PROCEDURAL DOCUMENTS

NOTICE OF AWARD

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Project Description: **PROJECT NO. 2018-07W, "ALTITUDE VALVE AT SOUTHWEST RESERVOIR"** The Owner has considered the Bid submitted by you for the above described Work in response to its Invitation for Bids dated \_\_\_\_\_ and the instruction to Bidders.

You are hereby notified that your Bid has been accepted in the amount of

\$ \_\_\_\_\_

You are required, as stated by the Instruction for Bidders, to execute the Agreement and furnish the required Contractor's Payment Bond, Performance Bond, City Business License, copy of Contractor License, and Certificates of Insurance and Endorsements within fifteen (15) calendar days from the date of this Notice.

If you fail to execute said Agreement and to furnish said Bonds and Certificates of Insurance and Endorsements within fifteen (15) days from the date of this Notice, said Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The Owner will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of the Acceptance Notice to the Owner, including the Bonds, Insurance, Business License, Contractor's License, etc.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
CITY OF BANNING (Owner)

## ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged by

\_\_\_\_\_ THIS \_\_\_\_\_  
day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



SECTION 1.10  
OF  
PROCEDURAL DOCUMENTS

NOTICE TO PROCEED

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Project Description: **PROJECT NO. 2018-07W, "ALTITUDE VALVE SOUTHWEST RESERVOIR"**

You are hereby notified to commence work in accordance with the Agreement dated \_\_\_\_ on or before \_\_\_\_\_, and you are to complete the work within **Ninety (90) working days** thereafter. The date of completion of all work is therefore \_\_\_\_\_.

You are required to return an acknowledged copy of the Acceptance of Notice to the owner.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

CITY OF BANNING (Owner)

\_\_\_\_\_  
Arturo Vela, Director of Public Works

\_\_\_\_\_  
Date

ACCEPTANCE OF NOTICE

Receipt of the Notice to Proceed for **PROJECT NO. 2018-07W, "ALTITUDE VALVE AT SOUTHWEST RESERVOIR"** is hereby acknowledged by

\_\_\_\_\_ this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Contractor

By \_\_\_\_\_

Title \_\_\_\_\_

SECTION 1.11  
OF  
PROCEDURAL DOCUMENTS

CHANGE ORDER

Change Order No. \_\_\_\_\_

Purchase Order No. \_\_\_\_\_

Date \_\_\_\_\_

Agreement Date \_\_\_\_\_

Sheet \_\_\_\_\_ of \_\_\_\_\_

Owner: CITY OF BANNING

Project: **PROJECT NO. 2018-07W, "ALTITUDE VALVE AT SOUTHWEST  
RESERVOIR"**

Contractor: \_\_\_\_\_

The following changes are hereby made to the Contract Documents:

## CHANGE TO CONTRACT PRICE

Original Contract Price

\$ \_\_\_\_\_

Current Contract Price adjusted by previous  
Change Order(s)

\$ \_\_\_\_\_

Contract Price due to this Change Order will  
be (increased) (decreased)

\$ \_\_\_\_\_

New Contract Price including this Change Order

\$ \_\_\_\_\_

## CHANGE TO CONTRACT TIME

Contract Time will be (increased) (decreased)

\_\_\_\_\_  
(Working Days)

Date for Completion of all Work

\_\_\_\_\_  
(Date)

## APPROVALS REQUIRED

To be effective, this order must be approved by the Owner, or as may otherwise be required by the Supplemental General Conditions.

Recommended by: \_\_\_\_\_

Date: \_\_\_\_\_

Approved by: \_\_\_\_\_

Date: \_\_\_\_\_

Accepted By: \_\_\_\_\_

Date: \_\_\_\_\_

SECTION 1.12  
OF  
PROCEDURAL DOCUMENTS

RELEASE

Owner:

\_\_\_\_\_

Contractor:

\_\_\_\_\_

Project No: **PROJECT NO. 2018-07W, "ALTITUDE VALVE AT SOUTHWEST RESERVOIR"**

In consideration of the final payment of the undisputed contract amounts of \$\_\_\_\_\_ relating to the above referenced project, the Contractor hereby Releases the Owner from any and all claims and liability for payment on the project except for any outstanding disputed amount listed below.

CONTRACTOR:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

Name: \_\_\_\_\_  
(Please Print)

Title: \_\_\_\_\_

**SECTION II - GENERAL CONDITIONS**



## Article 1. DEFINITIONS

- (a) Action of the City Council is a vote of a majority of a quorum of the Banning City Council at a lawful meeting.
- (b) Addenda are the changes in specifications, drawings, contract documents, and plans which have been authorized in writing by the City, and which alter, explain, or clarify the contract documents.
- (c) Approval means written authorization by the City for specific applications within the Contract.
- (d) The wording: [as shown, as indicated, as detailed] refers to drawings accompanying the specifications.
- (e) Construction Manager is the person or entity designated by the City to act as its representative in managing the day-to-day affairs of the construction process. The Manager will work closely with the City Engineer and have the same rights of access to the Project as does the City.
- (f) Contract, contract documents includes all contract documents, to wit: Notice Inviting Bids, Affidavit of Non Collusion, Instructions to Bidder, Designation of Subcontractor, Worker's Compensation Certificate, Performance Bond, Payment Bond, Insurance Policies, Guarantee, Release, Contractor's Proposal, Equal Opportunity Certificate, General Conditions, Supplementary Conditions, if any, Drawings, Plans, Specifications, the Agreement form and all modifications, addenda, and amendments thereto.
- (g) Contractor, City, or Owner is those mentioned as such in the Agreement. They are treated throughout the contract documents as if they are of singular number and neuter gender.
- (h) Engineer means the City Engineer, or other professional engaged by the City to design and oversee completion of the Project.
- (i) Project is the planned undertaking as provide in the contract documents by City and Contractor.
- (j) Provide shall include "provide complete in place," that is "furnish and install."
- (k) Safety Orders are those issued by any state or federal agency.
- (l) Standards, Rules, and Regulations referred to are the standard specifications (Green Book) and shall be considered as one and a part of these specifications within limits specified.
- (m) Subcontractor, as used herein, includes those having direct contract with Contractor and one who furnished material worked to a special design according to plans, drawings, and specifications of this work, but does not include one who merely furnishes material not so worked.
- (n) Surety is the person, firm or corporation that executes as surety the Contractor's Performance Bond and Payment Bond.
- (o) Work of the Contractor or subcontractor includes labor or materials (including, without limitation, equipment and appliances) or both, incorporated in, or to be incorporated in, the construction covered by the complete Contract.
- (p) Workers include laborer, worker, or mechanic.

## Article 2. STATUS OF CONTRACTOR

- (a) Contractor is, and shall at all times be deemed, wholly responsible for the manner in which it performs the service required of it by the terms of this Contract. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the City and Contractor or any of Contractor's agents or employees. Contractor assumes exclusively the responsibility for the acts of its employees and agents as they relate to the services to be provided during the course and scope of their employment. Contractor, its agents, and employees shall not be entitled to any rights or privileges of City employees. City shall be permitted to monitor the activities to determine compliance with the terms of this Contract.
- (b) Contractors are required by law to be licensed and regulated by the Contractor's State License Board. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, 3132 Bradshaw Road, Post Office Box 2600, Sacramento, California 95826.
- (c) The Contractor and the Sub Contractors shall obtain the City Business License prior to the start of work.

## Article 3. CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY.

Before Contractor makes any change in the name or legal nature of the Contractor's entity, Contractor shall first notify the City and cooperate with City in making such changes as the City may request in this Contract.

## Article 4. CONTRACTOR'S SUPERVISION.

- (a) During progress of the work, Contractor shall keep on the premises (including both the site and the plant) a superintendent satisfactory to City. Before commencing the work herein, Contractor shall give written notice to City of the name and Statement of Qualifications of such superintendent. Superintendent shall not be changed except with written consent of City, unless a superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ, in which case, Contractor shall notify City in writing. Superintendent shall represent Contractor and all directions given to superintendent shall be as binding as if given to Contractor.
- (b) The Contractor represents itself to City as a skilled, knowledgeable, and experienced contractor. The Contractor shall carefully study and compare the contract documents with each other and shall at once report to the City any errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the City for damage resulting from errors, inconsistencies, or omissions in the contract documents unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the City or unless a similarly skilled, knowledgeable, and experienced Contractor would have discovered such error,

- inconsistency, or omission. The Contractor shall perform no portion of the work at any time without contract documents or, where required, approved shop drawings, product data, or samples for such portion of the work.
- (c) The Contractor shall verify all indicated dimensions before ordering materials or equipment, or before performing work. The Contractor shall take field measurements, verify field conditions, and shall carefully compare such field measurements and conditions and other information known to the Contractor with the contract documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the City at once. Upon commencement of any item of work, the Contractor shall be responsible for dimensions related to such item of work and shall make any corrections necessary to make work properly fit at no additional cost to City.
  - (d) Omissions from the drawings or specifications, or the incorrect description of details of work which are manifestly necessary to carry out the intent of the drawing and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or incorrect described work, but they shall be performed as if fully correctly set forth and described in the drawings and specifications.

#### Article 5. SUBCONTRACTORS

- (a) Contractor agrees to bind every subcontractor to the terms of the Contract as far as such terms are applicable to subcontractor's work. If Contractor shall subcontract any part of this Contract, Contractor shall be fully responsible to City for acts and omissions of any subcontractor and of persons either directly or indirectly employed by any subcontractor. Nothing directly or indirectly employed by any subcontractor. Nothing contained in the contract documents shall create any contractual relation between any subcontractor and City, nor shall this Contract be construed to be for the benefit of any subcontractor.
- (b) City's consent to any subcontractor under this Contract shall not in any way relieve Contractor of any obligations under this Contract and no such consent shall be deemed to waive any provision of this Contract.
- (c) Pursuant to section 4104 of the Public Contract Code, Contractor must submit with its bid a Designation of Subcontractors. If Contractor specifies more than one subcontractor for the same portion of work or fails to specify a subcontractor, and such portion of the work exceeds one-half of one percent of the total bid, Contractor agrees that it is fully qualified to perform and shall perform such work itself, unless Contractor provides for substitution or addition of subcontractors. Substitution or addition of subcontractors shall be permitted only as authorized by sections 4100, et seq., of the Public Contract Code.

#### Article 6. NOTICE OF TAXABLE POSSESSORY INTEREST.

The terms of this Contract may result in the creation of possessory interest. If such a possessory interest is vested in a private party to this Contract, the private party may be

subjected to the payment of property taxes levied on such interest, and City shall not be obligated to pay said taxes.

#### Article 7. ASSIGNMENT OF ANTITRUST ACTIONS.

Section 4551 of the Government Code provides:

In entering into a public works contract or a subcontract to supply good, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body {City} all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 {commencing with Section 16700} of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works Contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

Contractor, for itself and all subcontractors, agrees to assign the City all rights, title, and interest in and to all such causes of action Contractor and all subcontractors may have. This assignment shall become effective at the time City tenders final payment to the Contractor and Contractor shall require assignments from all subcontractors to comply herewith.

#### Article 8. OTHER CONTRACTS

- (a) City reserves the right to let other contracts in connection with this work. Contract shall afford other contracts reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly connect and coordinate its work with theirs.
- (b) If any part of Contractor's work depends for proper execution or results upon work of any other contract, the Contractor shall inspect and promptly report to City, in writing, any defects in such work that render it unsuitable for such proper execution and results. Contractor will be held accountable for damages to City for that work which it failed to inspect or should have inspected. Contractor's failure to inspect and report shall constitute its acceptance of other contractors' work as fit and proper for reception of its work, except as to defects which may develop in other contractors' work after execution of Contractor's work.
- (c) To insure proper execution of its subsequent work, Contractor shall measure and inspect work already in place and shall at once report to the City in writing any discrepancy between executed work and the contract documents.
- (d) Contractor shall ascertain to its own satisfaction the scope of the work and nature of any other Contracts that have been or may be awarded by City in prosecution of the work to the end that Contractor may perform this Contract in the light of such other contract, if any.



- (e) Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy of the site of the project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the project. If simultaneous execution of any contract for the project is likely to cause interference with performance of some other Contract or contracts, City shall decide which contract shall cease work temporarily and which contractor shall continue whether work can be coordinated so that contractors may proceed simultaneously.
- (f) City shall not be responsible for any damages suffered or extra costs incurred by Contractor resulting directly or indirectly from award or performance or attempted performance of any other contract or contracts on the project, or caused by any decision or omission of City respecting the order of precedence in performance of contracts.

#### Article 9. OCCUPANCY

City reserves the right to occupy the project site or buildings at any time before completion of the work, and such occupancy shall not constitute final acceptance of any part of work covered by this Contract, nor shall such occupancy extend the date specified for completion of the work.

#### Article 10. CITY'S RIGHT TO TERMINATE CONTRACT.

- (a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified or any extension thereof, or fails to complete the work within such time, or if the Contractor should file a petition for relief as a debtor, or should relief be ordered against Contractor as a debtor, under Title 11 of the United States Code, or if Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough workers trained and skilled in the work they are performing or the materials indicated or specified to complete the work in the time specified, or if Contractor should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, or ordinances or instructions of City, or if Contractor or its subcontractors should otherwise be guilty of a substantial violation of any provision of this Contract, then City may, without prejudice to any other right remedy, serve written notice upon Contractor and its surety of City's intention to terminate this Contract, such notice to contain the reasons for such intention to terminate, and unless within ten (10) days after the service of such notice such conditions shall cease or such violation shall cease and arrangements satisfactory to City for the correction thereof be made, this Contract shall, upon the expiration of said ten days, cease and terminate.
- (b) In the event of any such termination, City shall immediately serve written notice thereof upon surety and Contractor, and surety shall have the right to take over and perform this Contract; provide, however, that if surety, within seven (7) days after service upon it of said notice of termination, does not give City written notice

of its intention to take over and perform this Contract and does not commence performance thereof within fifteen (15) days from date of serving such notice of termination by City on surety, City may then take over the work and prosecute same to completion by contract or by any other method it may deem advisable for the account and at the expense of Contractor, and Contractor and its surety shall be liable to City for any excess cost or other damages incurred by the City. Time is of the essence in this Contract. If the City takes over the work as hereinabove provided, the city may, without liability for so doing, take possession of and utilize in completing the work such materials, appliances, plant, and other property belonging to the Contractor as may be on the site of the work and necessary thereof.

- (c) If the expense of finishing the work, including compensation for additional architectural, managerial, and administrative service expense, shall exceed the unpaid balance of the Contract, Contractor shall pay the differences to the City. Expense incurred by City as herein provided, and damage incurred through Contractor's default, shall be certified to City.
- (d) The foregoing provision is in addition to and not in limitation of any other rights or remedies available to the City.
- (e) If, through no act or fault of the Contractor, the Work is suspended for a period of more than ninety (90) days by the Owner or under an order of court or other public authority, or the Engineer fails to act on any request for payment within thirty (30) days after it is submitted, or the Owner fails to pay the Contractor substantially the sum approved by the Engineer or awarded by arbitrators within thirty (30) days of its approval and presentation, then the Contractor may, after ten (10) days from delivery of a Written Notice to the Owner and the Engineer terminate the Contract and recover from the Owner payment for all work executed and all expenses sustained. In addition and in lieu a request for payment or if the Owner has failed to act on a request for payment or if the Owner has failed to make any payment as aforesaid, the Contractor may upon ten (10) day Written Notice to the owner and the Engineer stop the work until he has been paid all amounts then due, in which event and upon resumption of the work, change orders shall be issued or adjusting the contract price or extending the contract time or both to compensate for the costs and delays attributable to the stoppage of the work.
- (f) If the performance of all or any portion of the work is suspended, delayed, or interrupted as a result of a failure of the owner or Engineer to act within the time specified in the Contract Documents, or if not time is specified, within a reasonable time, and adjustment in the Contract Price or an extension of the Contract Time, or both, shall be made by Change Order to compensate the Contract of the costs and delays not necessarily caused by the failure of the Owner or Engineer.



Article 11. CONTRACT SECURITY - BONDS.

Contractor shall furnish to City a surety bond in an amount equal to 100 percent of Contract price as security for faithful performance of this Contract and shall furnish a separate bond in 100 percent of the Contract price as security for payment of persons performing labor and furnishing materials in connection with this Contract. Aforesaid bonds shall be in the form set forth in these contract documents.

Article 12. SUBSTITUTION OF SECURITIES.

- (a) Pursuant to the requirements of the Public Contract Code section 22300, upon Contractor's request, City will make payment to Contractor of any funds withheld from payments under this Contract if Contractor deposits with the City or in escrow with a California or federally chartered bank acceptable to City, securities eligible for the investment of State Funds under Government Code section 16430 or bank or savings and loan certificates of deposit, upon the following conditions:
  - (1) Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.
  - (2) All expenses relating to the substitution of securities under said section 22300 and under this clause, including, but not limited to City's overhead and administrative expenses, and expenses of escrow agent shall be the responsibility of the Contractor.
  - (3) Securities or certificates of deposit substituted for monies withheld shall be of a value equivalent to at least the amounts of retention to be paid to Contractor pursuant to this paragraph.
  - (4) If Contractor shall choose to enter into an escrow agreement, such agreement shall be in the form prescribed by Public Contract Code section 22300.
- (b) To minimize the expense cause by such substitution of securities, Contractor shall, prior to or at the time Contract requests to substitute security, deposit sufficient security to cover the entire amount to be then withheld and to be withheld under the General Conditions of this Contract. Should the value of such substituted security at any time fall below the amount for which it was substituted, or any other amount which the City determines to withhold, Contractor shall immediately and, at Contractor's expense, deposit additional security qualifying under section 22300 until the total security deposited is equivalent to no less than the amount subject to withholding under this Contract.
- (c) If any provisions of this Article shall be found to be illegal or unenforceable, the remaining provisions of this Article shall remain in force and effect, and the illegal or unenforceable provision shall be deemed stricken.

Article 13. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE.

- (a) Contractor shall take out and maintain during the life of this Contract such public liability, automobile, and property damage insurance to protect Contractor and City from all claims for personal injury, including accidental death, to any person (including, as to City, injury or death to Contractor's or subcontractor's employees), as well as from all claims for property damage arising from operations under this contract, in the amount set forth in the Supplemental General Conditions.
- (b) Contractor shall require its subcontractors, if any, to take out and maintain similar public liability and property damage insurance in like amounts or shall have the subcontractors named as "additional insured" on Contractor's policy.
- (c) Contractor shall submit proof of insurance and shall provide endorsements on the forms approved by the City. Such endorsements shall be submitted concurrently with the contract documents. The Contractor will not commence any work until he obtains at his own expense all required insurance. Such insurance must have the approval of the Owner as to limit, form and amount. The Contract will not permit any subcontractor to commence work on this project until the same insurance requirements have been fulfilled by such subcontractor.

The types of insurance the Contractor is required to obtain and maintain for the full period of the Contract will be Workers' Compensation and Employees Liability Coverage, Comprehensive General Liability Insurance and Automobile Liability Insurance as detailed in the following portions of these Specifications.

Any insurance bearing on adequacy of performance will be maintained after completion of the project for the full guarantee period.

Nothing contained in these insurance requirements is to be construed as limiting the extent of the contractor's responsibility for payment of damages resulting from his operations under this contract.

As evidence of specified insurance coverage, the Owner may in lieu of actual policies, accept certificates issued by the insurance carrier showing such policies in force for the specified period. Each policy or certificate will bear an endorsement or statement waiving right of cancellation or reduction in coverage without forty-five (45) days' notice in writing to the Owner.

Before the agreement between the Owner and the Contractor is entered into, the Contractor will submit written evidence that he and all subcontractors have obtained for the period of the Contract, full Workers' Compensation Insurance coverage for all persons whom they employ in carrying out the work under this Contract. This insurance will be in strict accordance with the requirements of the most current and applicable State Workers' Compensation Insurance laws.

Before commencement of the work, the Contractor shall submit written evidence that he and all his subcontractors have obtained for the period of the Contract, full comprehensive General Liability Insurance including completed operating insurance, and Vehicle Liability Insurance coverage. This coverage will provide for both bodily injury and broad form property damage.

The bodily injury portion will include coverage for injury, sickness or diseases and death, arising directly or indirectly out of, or in connection with, the performance of work under this contract, and will provide for a limit of not less than one million dollars (1,000,000.00) for all damages arising out of bodily injury, sickness, or disease to or death per each occurrence.

The property damage portion will provide for a limit of not less than one million dollars (\$1,000,000.00) for all damages arising out of injury to or destruction of property of others arising directly indirectly out of or in connection with the performance of work under this Contract an in any one occurrence including explosion, collapse and underground exposure.

A combined single limit policy with aggregate limits in the amount of two million dollars (\$2,000,000.00) will be considered equivalent to the required minimum limits.

Such insurance may have a deductible clause by "NOT TO EXCEED ONE THOUSAND (\$1,000.00).

The Contractor shall assume liability for an agrees to save the Owner, the Engineer, his consultants, the County of Riverside and each of their officers and employees and agents, harmless and indemnify them from every expense, liability or payment, including attorneys' fee, engineers' fees and court costs, by any reason of any damage or injury (including death) of persons or property arising or alleged to arise through any act or omission of the Contractor, his agents, subcontractor, servants or employees, or any of them, or from the conditions or the work of Contractor, or any part thereof, while directly or indirectly arising in any way from the work done or in the guarding of it in connection with any matters et herein, but not including the sole negligence of the Owner, the Engineer and his consultants, and each of their officers, employees and agents.

#### Article 14. WORKERS' COMPENSATION INSURANCE.

- (a) In accordance with the provisions of section 3700 of the California Labor Code, the Contractor and every subcontractor shall be required to secure the payment of compensation to its employees.
- (b) The Contractor shall provide, during the life of this Contract Workers' Compensation Insurance for all of its employees engaged in work under this Contract, on or at the site of the project, and in case any of its work is sublet, the Contract shall require the subcontractor, similarly, to provide workers' compensation insurance for all the latter employees. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the site of the project, is not protected under the Workers' Compensation statute, the Contractor shall provide, or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected before subcontractor commence work. The Contractor shall file with the City certificates of its insurance protecting workers, and a 45-day notice shall be provided to City before the cancellation or reduction of any policy of Contractor or subcontractor.

- (c) Contractor shall submit proof of insurance and shall provide endorsements. Such endorsements shall be submitted concurrently with the contract documents on the forms approved by the City.

Article 15. PROOF OF CARRIAGE OF INSURANCE.

- (a) Contractor shall not commence work, nor shall it allow any subcontractor to commence work, under this contract until all required insurance and certificates have been obtained and delivered in duplicate to, and approved by, City.
- (b) Pursuant to Insurance Code section 674, certificates and insurance policies shall include the following:
  - (1) A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to City stating date of cancellation or reduction. Date of cancellation or reduction may not be less than forty-five (45) days after date of mailing notice."
  - (2) Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
  - (3) Statement that the City and County of Riverside are name additional insured under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by the City.
- (c) Contractor shall submit proof of insurance and provide endorsements on the forms approved by the City. Such endorsements shall be submitted concurrently with the contract documents.

Article 16. DRAWINGS AND SPECIFICATIONS.

- (a) Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The plans and specifications are made as a part of the contract.
- (b) Materials or work described in words which so applied has a well know technical or trade meaning shall be deemed to refer to such recognized standards.
- (c) It is not the intention of the Contract to go into detailed description of any material and/or methods commonly known to the trade under the "trade name" or trade term." The mere mention or notation of such "trade name" or "trade term" shall be considered a sufficient notice to Contractor that it will be required to complete the work so name with all its appurtenances according to the best practices of the trade.
- (d) The naming of any material and/or equipment shall mean furnishing and installing of same, including all incidentals and accessory items thereto and/or labor therefor, as per best practices of the trade(s) involved, unless specifically noted otherwise.
- (e) Figured dimensions on drawings shall govern, but work not dimensioned shall be as directed. Work not particularly shown or specified shall be the same as similar parts that are shown or specified. Large scale details shall take precedence over



smaller scale drawings as to shape and details of construction. Specifications shall govern as to materials, workmanship, and installation procedures. Drawings and specifications are intended to be fully cooperative and to agree. However, if Contractor observes that drawings and specifications are in conflict, Contractor shall promptly notify the City in writing, and any necessary changes shall be adjusted as provided in the Article entitled "Changes and Extra Work." The specifications calling for the higher quality material or workmanship shall prevail.

- (f) Specifications and accompanying drawings are intended to delineate and described the project and its component parts to such a degree as to enable skilled and competent contractors to intelligently bid upon the work, and to carry said work to a successful conclusion.
- (g) Drawings and specifications are intended to comply with all laws, ordinances, rules, and regulations of constituted authorities having jurisdiction, and where referred to in the contract documents, said laws, ordinances, rules, and regulations shall be considered as a part of said Contract within the limits specified. The Contractor shall bear all expenses of correcting work done contrary to said laws, ordinances rules, and regulations if the Contractor knew or should have known that the work as performed is contrary to said laws, ordinances, rules, and regulations if the Contractor performed same (1) without first consulting the City for further instructions regarding said work or (2) disregarded the City's instructions regarding said work.
- (h) Questions regarding interpretation of drawings and specifications shall be clarified by the City Engineer. Should the Contractor commence work or any part thereof without seeking clarification, Contractor waives any claim for extra work or damages as a result of any ambiguity, conflict, or lack of information.
- (i) Contractor will be furnished, free of charge, three sets of permitted documents, three sets of specifications, and three sets of drawings; he is to provide, at his own expense, all additional copies which he requires for his operation. He shall maintain an accurate record of all copies made and shall return or otherwise account for all copies at the end of the project.
- (j) No part of this document may be photocopied or otherwise replicated in any manner without the prior express written authorization of the City of Banning. Any use of this document without having first paid the appropriate fee to the City of Banning shall cause a defect in any bid submitted there under, for which cause the bid shall be rejected in its entirety, and constitute a waiver of the bidder's right to participate in the bidding process.

## Article 17. OWNERSHIP OF DRAWINGS.

All plans, drawings, designs, specifications, and other incidental architectural and engineering work or materials and other contract documents and copies thereof furnished by City are its property. They are not to be used in other work and, with the exception of signed sets of the Contract, are to be returned to it on request at completion of work.

## Article 18. DETAIL DRAWINGS AND INSTRUCTIONS.

- (a) In case of ambiguity, conflict, or lack of information, City shall furnish, with reasonable promptness, additional instructions by means of drawings or otherwise, necessary for proper execution of work. All such drawings and instructions shall be consistent with contract documents, true developments thereof, and reasonably inferable therefrom.
- (b) Work shall be executed in conformity therewith and Contractor shall do no work without proper drawings and instructions.
- (c) The City will furnish necessary details to more fully explain the work, which details shall be considered as part of the contract documents.
- (d) Should any details require work and costs beyond those which reasonably should have been included in the Contract, Contractor shall give written notice thereof to the City within ten (10) days of the receipt of same. In case no notice is given to the City within ten (10) days, it will assume the details are reasonable development of the scale drawings. In case notice is given, then the claim will be considered and, if found justified, the City will either modify the drawings or shall recommend a change order for the extra work involved.
- (e) All parts of the described and shown construction shall be of the quality of their respective kinds shown in the plans or as specified, and the Contractor is hereby advised to use all diligence to become fully involved as to the required construction and finish, and in no case to proceed with the different parts of the work without first obtaining from the City some directions and/or drawings as may be necessary for the proper performance of the work.
- (f) If it is found at any time, before or after completion of the work, that the Contractor has varied from the drawings and/or specifications, in materials, quality, form, or finish, or in the amount or value of the materials and labor used, the City shall make a recommendation: (1) that all such improper work should be removed, remade, and replaced, and all work disturbed by these changes be made good at the Contractor's expense; or (2) that the City deduct from any amount due Contractor, the sum of money equivalent to the difference in value between the work performed and that called for by the drawings and specifications. The City, at its option, may pursue either course.

## Article 19. SUBMITTALS.

- (a) Contractor shall check and verify all field measurements and shall submit, with such promptness as to cause no delay in its own work or in that of any other



contractor, seven (7) copies checked and approved by Contractor of all shop or setting drawings, schedules, and materials list required for the work of various trades. City Engineer shall review such schedules and drawings only for conformance with design concept of project and compliance with information given in contract documents, and return marked "no exceptions noted" or "rejected" with guidance as to required corrections within ten (10) working days. Contractor shall make any correction required by City Engineer, file four (4) corrected copies with City Engineer, and furnish such other copies as may be needed for construction. City Engineer's approval of such drawings or schedules shall not relieve Contractor from responsibility for deviations from drawings or specifications unless Contractor has, in writing, called City Engineer's attention to such deviations at time of submission and secured City Engineer's written approval, nor shall it relieve Contractor from responsibility for errors in shop drawings or schedules.

- (b) All submittals of shop drawings, catalog cuts, data sheets, and material lists shall be complete and shall conform to contract drawings and specifications.

#### Article 20. LAYOUT AND FIELD ENGINEERING.

Not used.

#### Article 21. TESTS AND INSPECTIONS.

- (a) If City's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, Contractor shall give notice in accordance with such authority of its readiness for observation or inspection at least two (2) working days prior to being tested or covered up. If inspection is by an authority other than City, Contractor shall inform City of date fixed for such inspection. Required certificates of inspection shall be secured by Contractor. Observations by City shall be promptly made and, where practicable, at source of supply. If any work should be covered up without approval or consent of City, it must, if required by City, be uncovered for examination and satisfactorily reconstructed at Contractor's expense in compliance with this Contract. Costs of tests of any materials found to be not in compliance with this contract shall be paid for by contractor. Other costs for tests and inspection of materials shall be paid by City.
- (b) Where such inspection and testing are to be conducted by an independent laboratory or agency, such materials or samples of materials to be tested shall be selected by such laboratory or agency, or City's representative, and not by Contractor.
- (c) Contractor shall notify City, a sufficient time in advance, of manufacture of materials to be supplied by him under contract, which must by terms of contract be tested, in order that City may arrange for testing of same at source of supply. Any materials shipped by Contractor from source of supply prior to having satisfactorily passed such testing and inspection, or prior to receipt of notice from said representative that such testing and inspection will not be incorporated in work without prior approval of City and subsequent testing and inspection.

- (d) Re-examination of questioned work may be ordered by City and, if so ordered, work must be uncovered by Contractor. If such work be found in accordance with these contract documents, City shall pay cost of re-examination and replacement. If such work be found not in accordance with these contract documents, Contractor shall pay such costs.
- (e) The City will pay costs for all tests and inspections and shall be reimbursed by the Contractor for such costs under the following conditions:
  - (1) When such costs are stipulated in the provisions of the Contract documents to be borne by the Contractor.
  - (2) When a material is tested or inspected and fails to meet the requirements of the specifications and/or drawings;
  - (3) When the source of the material is changed after the original test or inspection has been made and approved.
- (f) If, in the opinion of the City Engineer, subsequent delivery of a tested material seems inferior to, or differs from, the original, said material shall be re-tested upon written order from either the City Engineer and, should the material fail to meet the requirements of the specifications and/or drawings, the Contractor shall pay all costs of such tests, but where the material does pass the requirements, the City will pay the cost.
- (g) All tests and inspections specified for each material shall be made in accordance with the detailed specifications for test or inspections of the material as specified.
- (h) If a material is not required to be tested, the City Engineer, subsequent delivery of a tested material seem inferior to, or differs from, the original, said material shall be re-tested upon written order from either the City Engineer and, should the material fail to meet the requirements of the specification.

## Article 22. TRENCHES

Pursuant to Labor Code Section 6705, if the Contract price exceed \$25,000 and involves the excavation of any trench or trenches five feet or more in depth, the Contractor shall, in advance of excavation, submit to the City a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the Shoring System Standards established by the Contraction Safety Orders, the plan shall be prepared by a registered Civil or Structural Engineer, but in no case shall such plan be less effective than that require by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by City or by the person to whom authority to accept has been delegated by the City.

Pursuant to Labor Code Section 6705, nothing in this article shall impose tort liability upon the City or any of its employees.

Article 23. DOCUMENTS ON WORK.

**Contractor shall keep on the job site at all times one legible copy of all contract documents, including addenda (if any), change orders, all approved drawings, plans, schedules, and specifications, the current edition of the "GREENBOOK," and all other codes and documents referred to in the specifications and made part thereof. Said documents shall be kept in good order and available to all authorities having jurisdiction over the work.**

Article 24. STATE AUDIT.

Pursuant to and in accordance with the provisions of Government Code section 10532, or any amendments thereto, all books, records and files of the City, the Contractor, or any subcontractor connected with the performance of this Contract involving the expenditure of funds in excess of ten thousand dollars (\$10,000), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Officer of the Auditor General of the State of California for a period of three (3) years after final payment is made under this Contract. Contractor shall preserve and cause to be preserved such books, records, and files for the audit period.

Article 25. SUBSTITUTIONS FOR SPECIFIED ITEMS.

- (a) Whenever in the specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specification shall be deemed to be used for the purpose of facilitating a description of material, process or article desired and shall be deemed to be followed by the words "or approved equal," and Contractor may, unless otherwise stated, offer any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified. If the material, process, or article offered by Contractor is not, in opinion of City, substantially equal or better in every respect to that specified, then Contractor shall furnish the material, process, or article specified. No substitutes shall be made until approved, in writing, by City. Burden of proof as to equality of any material, process, or article shall rest with Contractor. Contractor shall submit its request together with substantiating data for substitution of an "or equal" item within thirty (30) days after award of Contract. Provision authorizing submission of "or approved equal" jurisdiction of time of performance of this Contract.
- (b) In event Contractor furnishes material, process or article more expensive than that specified, the difference in cost of such material, process, or article so furnished shall be borne by Contractor. Any engineering, design fees, or approval agencies' fee required to make adjustments in material or work of all trades directly or indirectly affected by the approved substituted items shall be borne entirely by Contractor. Any difference in cost between an approved substitution, which is lower in cost than the originally specified material shall be refunded by Contractor to City.

## Article 26. SAMPLES

Contractor shall furnish for approval, within thirty (30) days following award of Contract, all samples as required in the specifications, together with any catalogs and supporting data required by City Engineer. This provision shall not authorize any extension of time for performance of this Contract. City Engineer shall review such samples as to conformance with design concept of work and for compliance with information given in contract documents and approve or disapprove same within ten (10) working days from receipt of same.

## Article 27. PROGRESS SCHEDULE

- (a) Within ten (10) days after the notice to proceed, Contractor shall prepare a progress schedule and submit same for City's review. The schedule shall indicate the beginning and completion dates of all phases of the Project. The City may disapprove such schedule and require modifications thereto if, in the opinion of the City, adherence to the progress schedule will not cause the work to be completed in accordance with the "Time for Completion" set forth in the Agreement.
- (b) Within ten (10) days after the Contractor has been notified to start work, he shall submit to the City a practicable schedule of operations on a chart form acceptable to the City. The schedule of operations shall show the order in which the Contractor proposes to carry out the work, the dates on which he will start each major subdivision of the work, and the contemplated dates of completion of such subdivisions.
- (c) If required by the City, the Contractor shall submit supplementary progress schedules on the chart form to indicate approximately the percentage of work scheduled for completion at any time.
- (d) The progress schedule and supplementary progress schedule shall be consistent in all respects with the time requirements of the contract, and shall be subject to review and modification by the City.

## Article 28. MATERIALS AND WORK.

- (a) Except as otherwise specifically stated in this Contract, Contractor shall provide and pay for all materials, labor, tools, equipment, transportation, superintendent, facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.
- (b) Unless otherwise specified, all materials shall be new and shall be of the respective kinds and grades as noted or specified.
- (c) Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of work and shall be stored properly and protected as required.
- (d) Contractor shall, after award of Contract by City, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to



- the work. Contractor shall, upon demand from the City, furnish to the City documentary evidence showing that orders have been placed.
- (e) City reserves the right, for any neglect in not complying with the above instruction, to place orders for such materials and/or equipment as it may deem advisable in order that the work may be completed at the date specified in the Agreement, and all expenses incidental to the procuring of said materials and/or equipment shall be paid for by the Contractor.
  - (f) No material, supplies, or equipment for work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in work and agrees upon completion of all work to deliver premises, together with all improvements and appurtenance constructed or placed thereon by it, to City free for many claims, liens, or charges. Contractor further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any work covered by Contract shall have any right to place a lien upon the premise or any improvement or appurtenance thereof, except that Contractor may install metering devices or other equipment of a utility company or political subdivision, title to which is commonly retained by the utility company or political subdivision. In event of installation of any such metering device or equipment, Contractor shall advise City as to its owner.
  - (g) Nothing contained in this Article, however, shall defeat or impair the rights of persons furnishing material or labor under any bond given by contractor for their protection or any rights under any law permitting such persons to look to funds which City otherwise would own to Contractor, and this provisions shall be inserted in all subcontracts and material contracts and notice of its provision shall be given to all persons furnishing material for work when no formal Contract is entered into for such material.
  - (h) The title to new materials and/or equipment for the work of this Contract, and attendant liability for its protection and safety, shall remain with Contractor until incorporated in the work of this Contract and accepted by the City; no part of said materials for immediate installation in the work of this Contract shall be removed from its place of storage, and Contractor shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to the City or its authorized representative.

#### Article 29. INTEGRATION OF WORK.

- (a) Contractor shall do all cutting, fitting, patching, and preparation of work as required to make its several parts come together properly, and fit it to receive or be received by work of other contractors showing upon, or reasonably implied by, the drawings and specifications for the completed structure, and shall make good after them as City may direct.
- (b) All cost caused by defective or ill-timed work shall be borne by Contractor.
- (c) Contractor shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other Contractor save with the

- review and consent of City.
- (d) Contractor shall be solely responsible for protecting existing work on adjacent properties and shall obtain all required permits for shoring and excavations near property lines.
  - (e) When modifying existing work or installing new work adjacent to existing, Contractor shall match, as closely as conditions of site and materials will allow, the finishes textures, and colors of the original work, refinishing existing work as required, at no additional cost to City

#### Article 30. OBTAINING OF PERMITS, LICENSES, AND EASEMENTS.

- (a) Permits, licenses, and certificates necessary for prosecution of work shall be secured and paid to City, unless otherwise specified. Contractor shall, and shall require subcontractors to, maintain contractor's licenses in effect as required by law.
- (b) Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by City, unless otherwise specified.

#### Article 31. SURVEYS

Construction staking, if requested by Contractor, will be provided by the City. Costs for re-staking due to damage during construction will be at Contractor's expense.

#### Article 32. EXISTING UTILITY LINES; REMOVAL, RESTORATION.

- (a) It shall be Contractor's sole responsibility to timely notify all public and private utilities serving the site prior to commencing work. The Contractor shall notify and receive clearance from any cooperative agency, such as Underground Service Alert, in accord with Government Code section 4216. DIG ALERT TOLL FREE TELEPHONE (800) 422-4133 or (800) 227-2600 or 811.
- (b) After getting clearance from DIG ALERT, before commencing work, the Contractor shall notify the City immediately of any potential conflict or interference discovered and shall seek the City resolution.
- (c) Pursuant to Government Code section 4215, the City assumes the responsibility for removal, relocation, and protection of utilities located on the construction site at the time of commencement of construction under this Contract with respect to any such utility facilities which are not identified in the plans and specifications. The Contractor shall not be assessed for liquidated damages for delay in completion of the project caused by failure of the City to provide for removal or relocation of such utility facilities. City shall compensate the Contractor for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not



indicated in the plans and specification with reasonable accuracy, and for equipment necessarily idle during such work.

- (d) This Article shall not be construed to preclude assessment against the Contractor for any other delays in completion of the work. Nothing in this Article shall be deemed to require the City to indicate the presence of existing service lateral or appurtenances whenever the presence of such utilities on the site of the construction project can be inferred from the presence of other visible facilities, such as buildings, meters, junction boxes, manholes, or similar appurtenances on or adjacent to the site of the construction.
- (e) If the Contractor, while performing work under this Contract, discovers utility facilities not identified by the City in the Contract plans or specifications, Contractor shall immediately notify the City and the utility in writing.

#### Article 33. WORK TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS.

- (a) Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations, bearing on conduct of work as indicated and specified. Including but not limited to the appropriate statutes. If Contractor observes that drawings and specifications are at variance therewith, or should Contractor become aware of the development of conditions not covered by contract documents which will result in finished work being at variance therewith, Contractor shall promptly notify City in writing and any changes deemed necessary by the City shall be adjusted as provided in Contract for changes in work.
- (b) If Contractor performs any work which it knew, or through exercise of reasonable care should have known, to be contrary to such laws, ordinances, rules or regulations, and without such notice to City, Contractor shall bear all costs arising therefrom. Where specifications or drawings state that materials, processes, or procedures must be approved by other bodies or agencies Contractor shall be responsible for satisfying requirements of such bodies or agencies.

#### Article 34. ACCESS TO WORK.

City and its representatives shall at all times have access to work site whenever the preparation is in progress. Contractor shall provide safe and proper facilities for such access so that City's representative may perform their functions.

#### Article 35. UTILITIES.

Water will be provided by the City. All other utilities, including, but not limited to, electricity, gas, and telephone as needed at work site shall be furnished and paid for by Contractor. Contractor shall furnish and install necessary temporary distribution systems, including meters, if necessary, from distribution points to points on site where utility is necessary to carry on the work. Upon completion of work, Contractor shall remove all temporary distribution systems.

#### Article 36. CLEANING UP.

Contractor at all times shall keep the premises free from debris such as waste, rubbish, and excess materials and equipment caused by this work. Contractor shall not leave debris under, in, or about the premises, but shall promptly remove same from the premises and dispose of it in a lawful manner. Disposal receipts or dump tickets shall be furnished to the City upon request. If Contractor fails to clean up, the City may do so and the cost thereof shall be charged to the Contractor.

#### Article 37. PATENTS, ROYALTIES, AND INDEMNITIES.

The Contractor shall hold and save the City and its officers, agents, and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, article, or appliance manufactured or used in the performance of this Contract, including its use by the City, unless otherwise specifically provided in the contract documents, and unless such liability arises from the sole active negligence or willful misconduct of the City.

#### Article 38. GUARANTEE.

- (a) In addition to guarantees required elsewhere, Contractor shall, and hereby does, guarantee all work furnished on the job against all defects for a period one (1) year after date of acceptance of work by City and shall repair or replace any and all such work, together with any other work, which may be displaced in so doing that may prove defective in workmanship and/or materials within one (1) year period from date of acceptance without expense whatsoever to City, ordinary wear and tear, unusual abuse or neglect excepted. City will give notice of observed defects to Contractor and Surety with reasonable promptness. Contractor shall notify City upon completion of such repair or replacement.
- (b) In the event of failure of Contractor or Surety to commence and pursue with diligence said replacements or repairs within ten (10) days after being notified in writing, City is hereby authorized to proceed to have defects repaired and made good at expense of Contractor and Surety who hereby agree to pay costs and charges therefor immediately on demand.
- (c) If, in the opinion of the City, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the City or to prevent interruption of operations of City, the city will attempt to give the notice required by this Article. If the Contractor or Surety cannot be contracted or neither complies with the City's request for correction within a reasonable time as determined by the City, the City may, notwithstanding the provisions of this Article, proceed to make such correction or provide such attention and the costs of such correction or attention shall be charged against the Contractor and Surety of the guarantees provided in this Article or elsewhere in this Contract.
- (d) This Article does not in any way limit the guarantees in any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee

- for a longer period. Contractor shall furnish to City all appropriate guarantee or warranty certificates upon completion of the project or upon request by City.
- (e) All guarantees required under this Article shall be in writing on the Guarantee Form included in contract documents.
  - (f) Nothing herein shall limit any other rights or remedies available to City.

#### Article 39. DUTY TO PROVIDE FIT WORKERS.

- (a) Contractor and subcontractors shall at all times enforce strict discipline and good order among their employees and shall not employ on work any person not skilled in the work assigned to such person. It shall be the responsibility of Contractor to insure compliance with this Article.
- (b) Any person in the employ of the Contractor or subcontractors whom City may deem unfit shall be excluded from the work site and shall not again be employed on it except with written consent of City. As used in this subsection, "unit" means any person who the City concludes is either not, or improperly, skilled for the task assigned to that person, who fails to comply with the requirements of this article, or who creates safety hazards which jeopardize other persons and/or property.
- (c) Contractor shall take all reasonable steps necessary to insure that any employees of Contractor or any of its subcontractor's employees do not use, consume, or work under the influence of any alcohol or illegal drugs while on the project. Contractor shall further prevent employees of contractor or any of its subcontractors from playing any recorded music devices or radios or wearing any radio headphone devices for entertainment while working on the project. Likewise, Contractor shall preclude any of its employees or subcontractor's employees from bringing any animal onto the project.

#### Article 40. WAGE RATES, TRAVEL, AND SUBSISTENCE.

- (a) Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, division 2 of the Labor Code of California, the city has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification or type of worker need to execute this Contract from the Director of the Department of Industrial Relations (hereinafter, in this Article "Director"). These rates are on file with the City of Banning, Engineering Department and copies will be made available to any interested party on request. Contractor shall post a copy of such wage rates at the job site.
- (b) Holidays and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. Holidays shall be as defined in the Collective Bargaining Agreement applicable to each particular craft, classification or type of worker employed under the Contract.
- (c) Contractor shall pay, and shall cause to be paid, to each worker engaged in work on the project not less than the general prevailing rate of per diem wages



- determined by the Director, regardless of any contractual relationship which may be alleged to exist between the contractor or any subcontractor and such workers.
- (d) Contractor shall pay, and shall cause to be paid, to each worker needed to execute the work on the project travel and subsistence payments, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Department of Industrial Relations in accordance with Labor Code section 1773.8.
  - (e) If during the period this bid is required to remain open the director determines that there has been a change in any prevailing rate of per diem wages in the locality in which the work under the Contract is to be performed, such change shall not alter the wage rates in the Notice to Contractors or the Contract subsequently awarded.
  - (f) Pursuant to Labor Code section 1775, Contractor shall as a penalty to the City, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each work paid less than the prevailing rates, determined by the Director, for such work or craft in which such worker is employed for any public work done under the Contract by Contractor or by any subcontractor under it. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor.
  - (g) Any worker employed to perform work on the project, which work is not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to work to be performed by him, and such minimum wage rate shall be retroactive to time of initial employment of such classification.
  - (h) Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provide for in Labor Code section 1777.3.8
  - (i) Contractor shall post at appropriate conspicuous points on the site of project, a schedule showing all determined minimum wage rates and all authorized deduction, if any, from unpaid wages actually earned.

#### Article 41. HOURS OF WORK.

- (a) As provided in article 3, (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this Contract upon the work or upon any part of the work contemplated by this Contract shall be limited and restricted by the Contractor to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provide. Notwithstanding the provisions hereinabove set forth, work performed by employees of Contractor in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

- (b) Pursuant to Labor Code section 1813, the Contractor shall pay to the City a penalty of twenty-five dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code.
- (c) Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to City unless otherwise agreed to in writing before the work in question is commenced pursuant to Article 52, Changes and Extra Work.

#### Article 42. PAYROLL RECORDS.

- (a) Pursuant to the provision of section 1776 of the Labor Code, the Contractor shall keep and shall cause each subcontractor performing any portion of the work under this Contract to keep, an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee by Contractor in connection with the work. All payrolls shall appear on Department of Labor Form WH-347.
- (b) The payroll records enumerated under subdivision (a) shall be certified, shall be submitted on a weekly basis by the contractor and the sub-contractor and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
  - (1) A certified copy of any employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
  - (2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the City, the Division of Labor Standards Enforcement, and the Division of Industrial Relations.
  - (3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or copies thereof made; provide, however, that a request by the public shall be made throughout either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the Contractor.
  - (4) The form of certification shall be as follows:

I, \_\_\_\_\_ (Print Name), the undersigned,  
am \_\_\_\_\_ (position in business) with the authority to act

for and on behalf of \_\_\_\_\_ (Name of business and/or Contractor). I certify under penalty of perjury that the records or copies submitted herein and consisting of (description, number of pages) are the originals or true, full and correct copies of the originals which depict the payroll record(s) of the actual disbursements by way of cash, check, or whatever from to the individual or individuals named.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

- (c) Each contractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.
- (d) Any copy of records made available for inspection copies and furnished upon request to the public or any public agency by the City, the division of Apprenticeship Standard, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor awarded the contract or performing the contract shall not be marked or obliterated.
- (e) The Contractor shall inform the City of the location of records enumerated under subdivision (a), including the street address, city and county, and shall within five (5) working days, provide a notice of a change of location and address.
- (f) In the event of noncompliance with the requirements of this section, the Contractor shall have ten (10) days in which to comply, subsequent to receipt of written notice, specifying in what respects the Contractor must comply with this section. Should noncompliance still be evident after the 10-day period, the Contractor shall, as a penalty to the city, forfeit twenty-five dollars (\$25.00) for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.
- (g) It shall be the responsibility of the Contractor to insure compliance with the provisions of this Article and the provisions of Labor Code section 1776.

#### Article 43. APPRENTICES.

- (a) The Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, this Contract is governed by the provisions of Labor Code section 1777.5. It shall be the responsibility of the Contractor to insure compliance with this article and with Labor Code section 1777.5 for all apprenticeship occupations.
- (b) Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.



- (c) Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he is employed, and shall be employed only at the work of the craft or trade to which he is registered.
- (d) Only apprentices, as defined in section 3077, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3 of the Labor Code, are eligible to be employed. The employment and training of each apprenticeship shall be in accordance with the provisions of the apprenticeship standards and apprentice agreement under which he is training.
- (e) Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, the Contractor and any subcontractors employing workers in any apprenticeship craft or trade in performing any work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the work.
- (f) Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, the Contractor and any subcontractor may be required to make contributions to the apprenticeship program.
- (g) If the Contractor or subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator or Apprenticeship, it shall:
  - (1) Be denied the right to bid on any subsequent project for one year from the date of such determination;
  - (2) Forfeit as a penalty to the City fifty dollars (\$50.00) per day for each calendar day of noncompliance, which shall be withheld from any payment due or to become due under the terms of this Contract. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council.
- (h) The Contractor and all subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.
- (i) Contractor shall become fully acquainted with the law regarding apprentices prior to commencement of the work. Special attention is directed to section 1777.5, 1777.6, and 1777.7 of the Labor Code, and Title 8, California Administrative Code, section 200 et seq. Questions may be directed to the **State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California.**

#### Article 44. LABOR - FIRST AID

The contractor shall maintain emergency first aid treatment for Contractor's workers on the project which complies with current Occupational Safety and Health regulations.

Article 45. PROTECTION OF PERSONS AND PROPERTY.

- (a) The Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care and protection of all materials delivered and work performed until the effective date of City Council approval of the Notice of completion. All work shall be solely at the Contractor's risk, with the exception of damage to the work cause by "acts of God" as defined in Government Code section 4151 (b). Contractor liability for any injury or damage proximately cause by any "act of God" shall be limited to five percent (5%) of the Contract price pursuant to Government Code section 4150.
- (b) Contractor shall take, and require subcontractor to take, all necessary precaution for safety of worker on the work and shall comply with all applicable federal, state, local and other safety laws, standards, orders, ruled, regulations, and building codes to prevent accident or injury to persons on, about, or adjacent to premises where work is being performed and to provide a safe and healthful place of employment. In addition to meeting all requirement of OSHA, Cal-OSHA, state, and local codes, Contractor shall furnish, erect and properly maintain at all times, as directed by City or required by conditions and progress of work, all necessary safety devices, safeguards, construction canopies, signs, audible devices for protection of the blind, safety rails, belts and nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazard created by such features in the course of construction. Contractor shall designate a responsible member of its organization on the work, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety requirements, and to protect the life, safety and health of workers. Name and position of person so designated shall be reported to City by Contractor. Contractor shall correct and violations of safety laws, rules, orders, standards, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, such violation shall be corrected promptly.
- (c) In an emergency affecting safety of life, of work, or of adjoining property, Contractor, without special instruction or authorization form City, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury; and Contractor shall so act if so authorized or instructed by City. City will not hold Contractor liable for damages proximately caused by Contractor's actions if such actions were reasonably necessary to prevent loss of life or injury to person or damage to work or adjoining property. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.
- (d) Contractor shall provide such heat, covering and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions.

- (e) Contractor shall take adequate precautions to protect existing roads, sidewalks, curbs pavements, utilities, adjoining property and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations. All permits, licenses, or inspection fees required for such repair work shall be obtained and paid for by Contractor.
- (f) Contractor shall (unless waived by the City in writing):
  - (1) When performing new construction on existing sites, become informed and take into specific account work which may interfere with school routine before or after school hours, enclose working area with a substantial barricade, and arrange work to cause a minimum amount of inconvenience and danger to students and faculty in their regular school activities. The Contractor shall comply with specifications and directives of the City regarding the timing of certain construction activities in order to avoid unnecessary interference with school functioning.
  - (2) Provide substantial barricade around any shrubs or trees indicated to be preserved.
  - (3) Deliver material to building area over route designated by City.
  - (4) Take preventive measures to eliminate objectionable dust.
  - (5) Confine apparatus, the storage of materials, and the operations of workers to limits indicted by law, ordinances, permits or directions of City; and shall not interfere with the work or unreasonably encumber premises or overload any structure with materials; and enforce all instructions of City regarding signs, advertising, fires, and smoking and require that all workers comply with all regulations while on construction site.
  - (6) Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved land surveyor or civil engineer and all maps and records required therefrom shall be filed with county and local authorities, at no cost to the City. All filing and plan check fees shall be paid by Contractor.

#### Article 46. NONDISCRIMINATION.

In the performance of the terms of this Contract, Contractor agrees that it will not engage in nor permit such subcontractor as it may employ to engage in unlawful discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical handicap, medical conditions, marital status, or sex of such person.

#### Article 47. COST BREAKDOWN AND PERIODICAL ESTIMATES.

- (a) Contractor shall furnish on forms approved by the City Engineer.
  - (1) Within fifteen (15) calendar days of award of this Contract, a detailed estimate giving complete breakdown of Contract price for such project or site; and

- (2) A periodical itemized estimate of work done for purpose of making partial payments thereon.
- (3) Within fifteen (15) calendar days of request of due City, a schedule of estimated monthly payments which shall be due Contractor under the Contract.

(b) Values employed in making up any of these schedules will be used only for determining basis of partial payment and will not be considered as fixing a basis for additions to or deductions from Contract price.

#### Article 48. CONTRACTOR CLAIMS.

If the Contractor shall claim compensation for any damage sustained by reason of the acts of the City or its agents, both Contractor and City shall follow the process outlined in Section 9204 of the Public Contract Code, which reads as follows:

9204. (a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.



(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified

neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.



(i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

SEC. 2. The Legislature finds and declares that it is of statewide concern to require a charter city, charter county, or charter city and county to follow a prescribed claims resolution process to ensure there are uniform and equitable procurement practices.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

#### Article 49. DISPUTES.

(a) In the event of a dispute between the parties as to performance of the work or the interpretation of the Contract, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, Contractor agrees to continue the work diligently to completion. There shall be at least one meeting between the parties regarding the issues before commencement of legal action. If the dispute is not resolved, Contractor agrees it will neither rescind the Contract nor stop the progress of the work, but Contractor's sole remedy shall be to submit such controversy to determination by a court of the State of California, in Riverside County, having competent jurisdiction of the dispute, after the Project has been completed, and not before.

#### Article 50. PAYMENTS.

(a) Unless otherwise specified, each month within thirty (30) days after receipt of an approved periodical estimate for partial payment, there shall be paid to Contractor a sum equal to **ninety-five percent (95%)** of the value of the work performed and no payment shall be made for the material delivered or stocks which is not installed and approved by the City Inspector, less aggregate previous payments. Monthly payments shall be made only on the basis of monthly estimates which shall be prepared by Contractor on a form approved by City and filed before the fifth day of the calendar month. The monthly estimate shall be submitted to the City Engineer, for his written approval or disapproval prior to submission to the City. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall operate to release Contractor or Surety from any damages arising from such work or from enforcing each and every provision of this Contract, and City shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimated processed or be entitled to have any payment for work performed so long as any lawful or proper direction concerning work, or any portion thereof, given by the City shall remain uncompiled with.

- (b) Before payment is made hereunder, a certificate in writing shall be obtained from the City stating that the work for which the payment is demanded has been performed in accordance with the terms of the Contract and that the amount stated in the certificates is due under the terms of the Contract. Such certificate shall be attached to and made a part of the claim made and filed with the City, provided that if the City shall, within three (3) days after written demand therefore, fail to deliver such certificate to the City, the Contractor may file its claim with the City without said certificate, but together with such claim shall be filed a statement that demand was made for such certificate and that the same was refused. Thereupon, the City will either allow said claim as presented or shall, by an order entered on the minutes of said City, state the reasons for refusing to allow said claim. It is understood, moreover, that the certificates shall not conclusive upon the City, but advisory merely.
- (c) **The City shall have right to withhold payment under this Article for the following additional reasons:**
  - (1) **Failure to file required reports for work through the end to the previous calendar month;**
  - (2) **Failure to update as-built drawings for work through the end of the previous calendar month;**
  - (3) **Failure to submit certified payrolls for work ending by the beginning of the previous calendar month; and,**
  - (4) **Failure to submit an update progress schedule during the previous calendar month.**
- (d) No payment by City hereunder shall be interpreted so as to imply that City has inspected, approved, or accepted any part of the work. **The final payment of five percent (5%) of the value of the work done under this Contract, if unencumbered, shall be made thirty-five (35) days after recording of the Notice of Completion by the County Recorder. Acceptance will be made only by action of the City Council.**
- (e) Unless otherwise provided, on or before making request for final payment of the undisputed, amount due under the Contract, contractor shall submit to City, in writing, all claims for compensation under or arising out of this contract. As a condition of final payment, the Contractor shall execute a release on a form approved by the City, in favor of the City, which shall release and discharged all claims which the Contractor has, claims to have, or which may be discovered in the future, except those identified by Contractor in writing on the form of release as unsettled.

#### Article 51. CHANGES AND EXTRA WORK.

- (a) City may, as provided by law and without affecting the validity of this Contract, order changes, modifications, deletions and extra work by issuance of written change orders from time to time during the progress of the Project, Contract sum

being adjusted accordingly. All such work shall be executed under conditions of original Contract except that any claim for an extension of time caused thereby shall be adjusted at time of ordering such change.

- (b) In giving instruction, City shall have authority to make minor changes in work, not involving change in cost, and not inconsistent with purposes of building. Otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order from City, authorized by the City Engineer and/or by action of its City Council, and no claim for addition to Contract sum shall be valid unless so ordered.
- (c) Value of any such extra work, change, or deduction shall be determined at the discretion of City in one or more of the following ways:
- (1) By acceptable lump sum proposal from Contractor; or
  - (2) By unit prices contained in Contractor's original bid and incorporated in contract documents or fixed by subsequent agreement between City and Contractor; or
  - (3) By cost of material and labor and percentage for overhead and profit. The following form shall be used as applicable by the City and Contractor to communicate proposed additions and deductions to Contract.

	EXTRA	CREDIT
a. Material (attached itemized quantity and unit cost plus sales tax)	_____	_____
b. Labor (attached itemized hours and rates)	_____	_____
c. P.L. and P.D., Workers; Compensation Insurance, Social Security, and Unemployment Taxes, not to exceed 15% of Item b	_____	_____
d. Subtotal	_____	_____
e. Subcontractor's overhead and profit, Not to Exceed 10% of Item (d)	_____	_____
f. Subtotal	_____	_____
g. General Contractor's Overhead and Profit, not to exceed 15% of Item (f)	_____	_____
h. Subtotal	_____	_____
i. Bond Premium, not to exceed 1% of Item (h)	_____	_____
j. Total	_____	_____

- (d) The overhead markup in subparagraph (c) above includes all indirect, general, administrative, and unabsorbed overhead expenses. Contractor will be allowed the full amount of its labor burden and bond premium that it provides satisfactory proof of, up to, but not exceeding, the limits contained in subparagraph (c) above.
- (e) If the Contractor should claim that any instruction, request, drawing, specifications, action, condition, omission, default, or other situation obligates the City to pay additional compensation to the Contractor or to grant an extension of time for the compensation of the Contract, or constitutes a waiver of any provision in the Contract, Contractor shall notify the City, in writing, of such claim within ten (10) day period shall be deemed a waiver and relinquishment of such a claim against the City. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in this article.

#### Article 52. COMPLETION.

- (a) The City shall accept completion of the Contract and have the Notice of Completion recorded when the entire work shall have been completed to the satisfaction of the City.
- (b) However, the City, at its sole option, may accept completion of the Contract and have the Notice of Completion recorded when the entire work shall have been completed to the satisfaction of the City, except for minor corrective items, as distinguished from incomplete items.
- (c) If the Contractor fails to complete the minor corrective items prior to the expiration of the thirty-five (35) days period immediately following acceptance of completion, the City shall withhold from the final payment and amount equal to twice the estimated cost, as determined by the City, of each item until such time as the item is completed. Such cost shall include any additional architectural/engineering costs and administrative burden.
- (d) At the end of such 35-day period, if there are items remaining to be corrected, the City may elect to proceed as provided in the Article entitled "Adjustments to Contract Price."
- (e) The work may only be accepted as complete by action of the City Council.

#### Article 53. ADJUSTMENTS OF CONTRACT PRICE.

- (a) If Contractor defaults or neglects to carry out the work in accordance with the contract documents or fails to perform any provision thereof, City may, after ten (10) days written notice to the Contractor and without prejudice to any other remedy it may have, make good such deficiencies.
- (b) The City shall adjust the total Contract price by reducing the amount thereof by the cost of making good such deficiencies. If City deems it inexpedient to correct work injured or not done in accordance with Contract provisions, and equitable reduction in the Contract price shall be made thereof.



Article 54. CORRECTION OF WORK.

- (a) Contractor shall promptly remove from premises all work identified by City as failing to conform to Contract whether incorporated or not. Contractor shall promptly replace and re-execute its own work to comply with contract documents without additional expense to City and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.
- (b) If Contractor does not remove such work within a reasonable time, fixed by written notice, City may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) days' time thereafter, City may, upon ten (10) days written notice, sell such material at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

Article 55. EXTENSION OF TIME - LIQUIDATED DAMAGES.

- (a) Contractor shall be assessed the sum set forth in the Supplementary Conditions as liquidated damages for each and every day the work required under this contract remains unfinished past the time for completion, as set forth in the Agreement, and any extensions of time granted by the City to the Contractor under the terms of the contract documents. **THE CONTRACTOR AND CITY HEREBY AGREE THAT THE EXACT AMOUNT OF DAMAGES FOR FAILURE TO COMPLETE THE WORK WITHIN THE TIME SPECIFIED IS EXTREMELY DIFFICULT OR IMPOSSIBLE TO DETERMINE. THE PARTIES AGREE THAT THE AMOUNT SET FORTH IN THE SUPPLEMENTAL GENERAL CONDITIONS REPRESENTS A FAIR AND REASONABLE SUBSTITUTE FOR THOSE DAMAGES.** For purposes of this Article, the work shall be considered "complete" in accordance with the provisions of Article 52, Completion.
- (b) Contractor shall not be charged for liquidated damages, as set forth above, because of any delays in completion of work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including but not restricted to: acts of God, acts of public enemy, acts of Government, acts of City or any one employed by it or acts of another contractor in performance of a contract (other than this Contract) with City, fires, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather or delays of subcontractor due to such causes. "Unusually severe weather" shall be defined as that which exceeds the normal seasonally expected averages. Contractor shall, within ten (10) days of beginning of any such delay (unless City grants in writing a further period of time to file such notice prior to date of final settlement of the Contract), notify City in writing of causes of delay; thereupon City shall ascertain the facts and extent of delay and grant extension of time for completing work when, in its judgment, the finding of fact justify such an extension. The City's finding of fact thereon shall be final and conclusive on the parties hereto.

Article 56. PAYMENTS WITHHELD.

- (a) In addition to amount which City may retain under the Article entitled "Completion" and Article entitled "Payments," City may withhold a sufficient amount (up to 125%) or amounts of any payment or payments otherwise due to Contractor, as in its judgment may be necessary to cover:
- (1) Payments which may be past due and payable for just claims against Contractor or any subcontractors, or against and about the performance of work on the project under this Contract, including without limitation, payments made pursuant to the article entitled "Payments By Contractor."
  - (2) The cost of defective work which Contractor has not remedied;
  - (3) Liquidated damages assessed against Contractor;
  - (4) Penalties for violation of labor laws;
  - (5) The cost of materials ordered by the City pursuant to the Article entitled "Materials";
  - (6) The cost of completion of this Contract if there exists a reasonable doubt that this Contract can be completed for the balance then unpaid to Contractor;
  - (7) Site clean-up as provided in Article entitled "Cleaning Up."
- (b) If the Contractor, at its own expense, removes, the reason for withholding, then payment shall be made for amounts withheld.
- (c) City may apply such withheld amount or amounts to payment of such claims or obligations at its discretion. In so doing, City shall make such payments on behalf of Contractor. If any payment is so made by City, then such amount shall be considered as payment made under Contract by City to Contractor and City shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. City will render Contractor an accounting of such funds disbursed on behalf of Contractor.
- (d) As an alternative to payment of such claims or obligations, City, in its sole discretion, may reduce the total Contract price as provided in the Article entitled "Adjustments to Contract Price."

#### Article 57. EXCISE TAXES.

If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the City, upon request, will execute documents necessary to show same.

#### Article 58. NO ASSIGNMENT.

Contractor shall not assign this Contract or any part thereof without the prior written consent of City. Assignment without such prior written consent shall be null and void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of work called for



under said Contract in favor of all persons, firms or corporations rendering such service or supplying such materials to the extent that claims are filed pursuant to the Civil Procedure and shall also be subject to deductions for liquidated damages or withholding of payments as determined by the City in accordance with this Contract.

#### Article 59. NOTICE AND SERVICE THEREOF.

Any notice from one party to the other or otherwise under the Contract shall be in writing and shall be dated and signed by the party, or its duly authorized representative, giving such notice. Any such notice shall not be effective for any purpose whatsoever unless served in one of the following manners:

- (1) If notice is given to City, by personal delivery thereof to City or by depositing same in United States mails, enclosed in a sealed envelope addressed to City, and sent by registered or certified mail with postage prepaid;
- (2) If notice is given to Contractor, by personal delivery thereof to said Contractor or to Contractor's superintendent at site of project, or by depositing same in United States mail, enclosed in a sealed envelope addressed to said Contractor at its regular place of business or at such address as may have been established for the conduct of work under this Contract, and sent by registered or certified mail with postage prepaid;
- (3) If notice is given to Surety or other person, by personal delivery or by depositing same in United States mails, enclosed in a sealed envelope, sent by registered or certified mail with postage prepaid.

#### Article 60. NO WAIVER

The failure of the City in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option any future occasion.

#### Article 61. OWNER'S RIGHT TO CARRY OUT THE WORK.

If Contractor defaults or neglects to carry out the work in accordance with the contract documents or fails to perform any provision of this Contract, the City may, after ten (10) days' written notice to Contractor and without prejudice to any other remedy he may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due Contractor the cost of correction such deficiencies, including the cost of any additional service made necessary by such default, neglect or failure. If the payments then or thereafter due Contractor are not sufficient to cover such amount, then Contractor shall pay the difference to the City within ten (10) days.

#### Article 62. INDEMNIFICATION.

The work shall be performed entirely at Contractor's risk and Contractor shall defend, indemnify and hold harmless the City or the County of Riverside and its elected officials, officers, agents, servants, representatives and employees from and against all loss, including loss of use, liability damage, claims demands, actions and proceedings, and all costs and expense connected therewith, including reasonable attorney's fee, of whatsoever cause of nature on account of any damage to or loss or destruction of any property, including employees of City, or injury to or death of any person, including employees of City, caused in whole or in part by any negligent act or omission of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is cause in part by a party indemnified under the Contract. Contractor shall also defend, indemnify and hold City harmless from and against all claims and liens of all persons based upon the furnishing of labor and materials in connection with the performance of the work.

#### Article 63. HAZARDOUS MATERIALS.

In the event the Contractor encounter on the site material which it reasonably believes to be "hazardous material," as that term is defined by federal and state law, which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the City in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the City and Contractor if in fact the material is a "hazardous material," or when it has or been rendered, by written agreement of the City and Contractor, or in accordance with any federal or state agency having cognizance of the matter.

#### Article 64. MATERIAL SAFETY DATA SHEETS AND COMPLIANCE WITH PROPOSITION 65.

- (a) Contractor is required to insure that material safety data sheets are available in a readily accessible place at the work site, for any material requiring a material safety data sheet per the federal "hazard communication" standard, or employees' right-to-know law. The contractor is also required to insure proper labeling on any substance brought into the job site, and that any person working with the material, or within the general area of the material, is informed of the hazards of the substance and follows proper handling and protection procedures.
- (b) Contractor is required to comply with the provision of California Health and Safety Code section 25249, et seq., which requires the posting and giving of notice to persons who may be exposed to any chemical known to the State of California to cause cancer. The Contractor agrees to familiarize itself with the provisions of this section, and to comply fully with its requirements.

#### Article 65. NON-UTILIZATION OF ASBESTOS MATERIAL.

- (a) NO ASBESTOS OR ASBESTOS-CONTAINING PRODUCTS SHALL BE USED IN THIS CONSTRUCTION OR IN ANY TOOLS, DEVICES, CLOTHING, OR EQUIPMENT USED TO EFFECT THIS CONSTRUCTION.

Asbestos and/or asbestos-containing products shall be defined as all items containing, but not limited to, chrysotile, amosite, anthophyllite, tremolite, and antinolite.

Any or all material containing greater than one-tenth of one percent (>.1%) asbestos shall be defined as asbestos-containing material.

All work or materials found to contain asbestos or work or material installed with asbestos-containing equipment will be immediately rejected and this work will be removed at no additional cost to the City.

- (b) Decontamination and removal of work found to contain asbestos or work installed with asbestos-containing equipment shall be done only under supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency.

The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant, who shall have sole discretion and final determination in this matter.

The asbestos consultant shall be chosen and approved by the City, who shall have sole discretion and final determination in this matter.

The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

- (b) Interface of work under this contract with work containing asbestos shall be executed by the Contractor at his risk and at his discretion, with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos-containing products. By execution of this Contract, the Contractor acknowledges the above and agrees to hold harmless City and its assigns for all asbestos liability which may be associated with the is work and agrees to instruct his employees with respect to the above-mentioned standards, hazards, risks and liabilities.

## Article 66. RECORDS RETENTION AND INSPECTION.

The Contractor and subcontractor(s) shall allow authorized Federal, State, County and/or City officials' access to the work area, fiscal, payroll, materials, and other relevant contract records. All relevant records must be retained for at least three years.



**SECTION III - SUPPLEMENTAL GENERAL CONDITIONS**

A. Specifications

The performance of the Contract, all materials supplied and all work performed shall be in accordance with the Standard Specifications for Public Works Construction, Current Edition, including supplements excepted as otherwise noted in this contract or on the project plans.

B. Contractor's Representative

The contractor's attention is directed to Section 7-6 of the Standard Specifications ("Greenbook"), the Contractor's Representative. Prior to the commencement of work, the Contractor shall submit, in writing, the name of his designated representative and alternate, if any. Failure of the Contractor's representative, or his alternate, to be present at the job site while construction is proceeding shall constitute suspension of the Contract and all work performed in the absence of the Contractor's representative, or alternate, is subject to rejection.

C. Activities/Submittals Required in Writing Prior to Commencement of Work

Prior to commencement of work on this project, the Contractor is required to execute the Agreement and submit all documents required by the Contract including, but not limited to:

1. Designation of Contractor's representative.
2. Project schedule (bar graph form).
3. Certificates of Insurance.
4. Securities for performance and for labor and materials.
5. Certificate of Compliance or Certificate of Exemption from State of California Joint Apprenticeship Committee.
6. Photocopies of business licenses for contractor and all subcontractors.
7. Specific Injury Prevention and Safety Plan for the Project.

Additionally, Contractor must obtain all permits, pay all required fees, and schedule and attend the required preconstruction meetings.

The City will issue a Notice to Proceed after the above requirements have been met.

D. Project Schedule

The Contractor shall submit to the City for approval its proposed project schedule consistent in all respects with the time and order of work requirements of this Contract. Said schedule shall be in BAR GRAPH FORM and shall be sufficient detail to show the chronological relationship of all project activities.



The proposed project schedule shall be submitted within seven (7) calendar days prior to the Preconstruction Meeting. The City shall approve, conditionally approve, or disapprove the Contractor's proposed construction schedule within seven (7) calendar days of receipt thereof.

E. Pre-Work Meeting

Prior to commencing work, THE CONTRACTOR SHALL ATTEND A PRE-WORK MEETING with the City of Banning Public Works Department, interested utility companies, and other agencies that will be affected by this project. Project coordination, timing, and compliance with Federal regulations and Labor Standards will be discussed at the meeting.

F. Permits and Inspection Fee

Pursuant to Subsection 7-5, Permits, of the Standard Specifications ("Greenbook") and to the following Special Conditions.

The Contractor and Subcontractors are required to obtain all permits and licenses and pay the fees necessary to perform the contract work. A City Business License shall be obtained by the Contractor and Subcontractors.

Contractor to contact the City Business License Office at (951) 922-3126 for fees.

G. Contractor Submittals

Contractor submittals to the City shall be delivered to the **THE CITY OF BANNING, PUBLIC WORKS DEPARTMENT AND LABELED, PROJECT NO. 2018-07W, "ALTITUDE VALVE AT SOUTHWEST RESERVOIR"** For submittals requiring an action/approval, the City will respond within seven (7) calendar days of receipt of said submittal.

H. Potholing Requirements

The Contractor shall pothole and locate any utilities that are within the area of excavation prior to excavation. Pothole investigation shall be performed prior to developing pipeline lay drawings and prior to procurement of pipeline materials.

I. Disposal of Debris

Disposal of all materials will be the responsibility of the Contractor.

J. Protection and Restoration of Existing Improvements

The Contractor shall be responsible for the protection of property and all improvements adjacent to the work, and shall restore the entire work area to its original condition after completion of the work. The requirements of Section 7-9 of the Standard Specifications

(Greenbook) shall apply. Restoration and protection shall apply to all walls, irrigation systems, fences, PCC and AC paving and slabs, and all other types of improvements, except as otherwise provided in these Special Provisions. The costs to the Contractor for protecting, removing and restoring existing improvements to the satisfaction of the City Engineer shall be included in the bid. All survey monuments and ties shall be protected in place. Contractor shall notify the City if any survey monuments or ties are disturbed or destroyed.

K. State of California Safety Requirements:

The Contractor's attention is directed to the Standard Specifications (Greenbook); Subsection 7-10.4.1, Safety Orders, and Subsection 306.1.1.6, Bracing Excavations, relative to the safety and protection of workers and excavations. As provided in said Subsection 7-10.4.1., payment for all work necessary to provide safety measures shall be included in the prices bid for other items of work. The Contractor shall submit to the City his State of Division of Industrial Safety Trenching Permit number.

L. Open Trench Operations

All excavations shall be covered and secured at the end of each work day by means acceptable to the City.

M. Liquidated Damages

The City and Contractor hereby agree that in case all construction called for under the contract is not completed per contract allowed for completion, as extended by delays by the City, damages will be sustained by the City and that, it is and will be impracticable or extremely difficult to ascertain and determine the actual damages the city will sustain in the event of, and by reason of, such delay.

It is, therefore, agreed that such damages shall be presumed to be in the amount of **\$1,000.00 per calendar day**, and that the contractor will pay to the City, or City may retain from amounts otherwise payable to contractor, said amount for each day after failure to meet the requirements of the contract completion schedule herein.

N. Definition of Proposal Items

Final Pay Quantities for Unit Basis Items of Work

All items of work which are not designated on the Bid Schedule by the letters **LS**, or words **Lump Sum**, shall have final pay quantities measured and paid for in accordance with the Standard Specifications and Special Provisions.

Progress Payments for Lump Sum Items of Work

The word **Complete** in the Estimated Quantities column of the bid Schedule for a lump sum item of work shall mean that payment for that item (Estimated Quantities Column) of the work will only be made after all work for that item has been completed. The percent

(%) symbol in the Bid Schedule for a lump sum item of work shall mean that progress payments for that item will be allowed.

#### Final Pay Quantities for Lump Sum Items of Work

When the estimated quantity for an item of work is designated on the Bid Schedule by the letters **LS** or the words **Lump Sum**, said estimated quantity shall be the final quantity for which payment for said item of work will be made, unless the dimensions of said work, as shown on the plans, are revised by the Engineer. If such dimensions are revised and such revisions result in an increase or decrease in the quantity of such work, the final payment for said lump sum item will be revised in proportion to the change in quantities and authorized by Contract Change Order. The estimated quantity for a lump sum item of work shall be considered as approximate only, and no guarantee is made that the actual final quantity will equal the estimated quantity. No allowance will be made in the event that the actual final quantity does not equal the estimated quantity except as noted hereinabove.

The unit prices or lump sum prices to be paid for the item listed in the proposal shall include full compensation for furnishing all labor, materials, tools and equipment and doing all work involved in furnishing and installing the materials, complete and in place, in accordance with details shown on the plans and as specified herein. Any items shown on the plans, but not included in the bid items, shall be considered as appurtenance items. All costs shall be included within the appropriate item of the Contractor's bid.

#### O. Measurement and Payment

##### General

Replace the first sentence of the FIRST paragraph of Subsection 9-3 of the Standard Specifications with the following:

"For unit basis items of work, the estimated quantities listed on the Bid Schedule will not govern the final payment."

Add to the EIGHTH paragraph of Subsection 9-3.1 of the Standard Specifications (Greenbook) the following:

"In the event that one or more Stop Notices are filed with the City, an amount equal to One-Hundred and twenty-five Percent (125%) of the total of the amount (s) have been legally satisfied in accordance with applicable laws."

#### Partial and Final Payment

Replace the FIRST, SECOND, and THIRD paragraphs of Subsection 9-3.2 of the Standard Specifications with the following:

“Except as otherwise provided for L.S. items, the Contractor will be entitled to no more than one progress payment per month. Twenty-one (21) days prior and prerequisite to each progress payment, the Contractor shall submit to the Engineer a detail estimate and invoice for his estimate of the total quantity and value of work completed since the cutoff date for the previous progress payment. The Engineer will make the final determination as to the actual quantity and value of work completed for which payment will be made. Five percent (5%) will be deducted from each progress payment and retained by the City until later released as specified hereinafter.

“Before he shall be entitled to final payment of the retention withheld from the progress payments, the Contractor shall execute and file with the City a release on a form which complies with Section 3262 of the Civil Code and which is acceptable to the City, releasing the City from all claims or liability relating to undisputed contract amounts for work performed in relation to said amounts.

**“The final payment of the retention withheld from the progress payment shall not be due and payable until the expiration of at least thirty-five (35) calendar days from the date of recording of the Notice of Completion by the County Recorder.”**

#### Delivered Materials

Replace Subsection 9-3.3 of the Standard Specifications (Greenbook) with the following Special Provisions:

“Unless a bid item is included in the Bid Schedule and/or unless otherwise called for in these Special Provisions, no payment will be made for materials and/or equipment delivered but not yet incorporated in the work.”

#### P. Contractor's Equipment

GENERAL – It shall be the Contractor's responsibility to provide equipment that is adequate for the performance of the work under this contract within the time specified. All equipment shall be kept in satisfactory operating condition, shall be capable of safely and efficiently performing the required work, and shall be subject to inspection and approval by the Owner's representative at any time within the duration of the contract. All work hereunder shall conform to the applicable requirements of Cal-OSHA and OSHA Standards for Construction.

SEPARATE CONTRACTS – Whenever portions of the work hereunder are let under separate contracts, all of the provisions of the Section shall apply to each such prime contractor.



**CONSTRUCTION LIGHTING** – All work conducted at night or under conditions of deficient daylight shall be suitably lighted to insure proper work and to afford adequate facilities for inspection and safe working conditions.

**CONSTRUCTION WIRING** – All wiring for temporary electric light and power shall be installed and maintained in first class manner and shall be securely fastened in place. All electrical facilities shall conform to the requirements of Title 8, Industrial Relations, Subchapter 5, Electrical Safety Orders, California Administrative Code; and Subpart K of the OSHA Safety and Health Standards for Construction.

**SEPARATION OF CIRCUITS** – Unless otherwise permitted by the Engineer, circuits separate from lighting circuits shall be used for all power purposes.

**FIRE PROTECTION** – The Contractor's fire protection program shall have a plan to address possible equipment fires.

#### Q. Utilities

**WATER SUPPLY** – Water for project purposes will be furnished on site by the Owner; however, the Contractor shall make all necessary provisions for conveying the water from the Owner-designated source to the points of use.

**WATER CONNECTIONS** – The Contractor shall not make connection to, or draw water from, any fire hydrant or pipeline without first obtaining permission of the authority having jurisdiction over the use of said fire hydrant or pipeline and from the agency owning the affected water system. For each such connection made, the Contractor shall first attach to the fire hydrant or pipeline a valve and a meter, if required by said authority, or a size and type acceptable to said authority and agency.

**REMOVAL OF WATER CONNECTIONS** – Before final acceptance of the work on the project, all temporary connections and piping installed by the Contractor shall be entirely removed, and all improvements shall be restored to their original condition, or better, to the satisfaction of the Engineer and to the agency owning the affected utility.

**POWER** – Reasonable power for execution of the terms of the contract will be furnished by the Owner when available at the site. The Contractor shall provide, at his own expense, temporary power poles and appurtenances necessary for conveying power from Owner's power source to the point of use or generators necessary for supplying power equipment.

**APPROVAL OF ELECTRICAL CONNECTIONS** – All temporary connections for electricity shall be subject to approval of the Engineer and Owner, and shall be removed in like manner at the Contractor's expense prior to final acceptance of the work.

## R. Safety

GENERAL – Appropriate first aid facilities and supplies shall be kept and maintained by the Contractor at the site of the work. All persons within the construction area shall be required to adhere to all specified safety requirements. All employees of the Contractor and his subcontractor shall be provided with, and required to use, personal protective and lifesaving equipment as set forth in Article 3 and 24 of Cal-OSHA, and Subpart E of the OSHA Safety and Health Standards for Construction (29CFR 1926)

PUBLIC SAFETY – During the performance of the work the Contractor shall, erect and maintain temporary fences, bridges, railings, platforms, scaffolding, and barriers and shall take all other necessary precautions and place proper guards for the prevention of accidents and he shall erect and maintain suitable and sufficient lights and other signals.

## S. Explosives and Blasting

Not used.

## T. Dust Abatement

The Contractor shall furnish all labor, equipment, and means required and shall carry out effective measures whenever and as necessary to prevent his operation from producing dust in amounts damaging to property, cultivated vegetation, or domestic animals, or causing a nuisance to persons living in or occupying buildings in the vicinity. The Contractor shall be responsible for any damage resulting from any dust originating from his operations. The dust abatement measures shall be continued until the Contractor is relieved of further responsibility by the Engineer.

No separate payment will be allowed for dust abatement measures and all costs shall be included in the Contractor's bid price.

## U. Rubbish Control

During the progress of the work, the Contractor shall clean the site of the work and other areas used by him weekly and shall keep the site in a neat and clean condition, and free from any accumulation of rubbish. The Contractor shall dispose of all rubbish and waste materials of any nature occurring at the work site, and shall establish regular intervals of collection and disposal of such materials and waste. He shall also keep his haul roads free from dirt, rubbish, and unnecessary obstructions resulting from the operations. Equipment and material storage shall be confined to areas approved by the Engineer. Disposal of all rubbish and surplus materials shall be off the site of construction, at the Contractor's expense, all in accordance with local codes and ordinances governing locations and methods of disposal, and in conformance with all applicable safety laws, and to the particular requirements of Subpart H, Section 1926.252 of the OSHA Safety and Health Standards for Construction.



## V. Sanitation

TOILET FACILITIES – Fixed or portable chemical toilets shall be provided wherever needed for the use of employees. Toilet at job sites shall conform to the requirements of Subpart D, Section 1926.51 of the OSHA Standards for Construction.

SANITARY AND OTHER ORGANIC WASTES – The Contractor shall establish a regular daily collection of all sanitary and any organic wastes. All wastes and refuse from sanitary facilities provided by the Contractor or organic material wastes from any other source related to the Contractor's operations shall be disposed of away from the site in a manner satisfactory to the Engineer and in accordance with all laws and regulations pertaining thereto. Disposal of all such wastes shall be at the Contractor's expense

## W. Chemicals

All chemicals used during project construction or furnished for project operation, whether defoliant, soil sterilant, herbicide, pesticide, disinfectant, polymer, reactant or of other classification, shall show approval of either the U.S. Environmental Protection Agency or the U.S. Department of Agriculture. Use of all such chemicals and disposal of residues shall be in strict accordance with the printed instructions of the manufacturer.

**SECTION IV – SPECIAL PROVISIONS**

## PART 1 - GENERAL

### 4.1 Scope of Work

The scope of work under this project includes the equipping of an existing storage tank reservoir with a below-grade altitude valve in an access vault, and all appurtenances required for the proper functioning of the valve and associated storage reservoir. Work includes, but is not limited to, fabrication and installation of welded joint steel pipe, installation of vault and valves, fittings, and appurtenances; modifications and connections to existing waterlines; removal and disposal of portions of the existing water line; paving removal and replacement, and all other associated work.

The work will equip the reservoir tank with altitude valves to prevent the tank from filling above a pre-set level if zone pressures attempt to increase the tank level above the preset high level.

The bid shall include all costs for furnishing all labor, materials, tools, equipment and necessary incidentals to perform work including but not limited to mobilization, participation in safety meetings and clean up. Work and materials shall be per Standard Specifications for Public Works ("Greenbook"), latest edition, and these Special Provisions, unless otherwise modified.

### 4.2 Time of Completion

As set forth in the contract agreement, the Contractor shall begin work on the date as per NOTICE TO PROCEED and shall diligently prosecute the same to completion by **Ninety (90)** working days after date in said notice.

### 4.3 Payment

The Contractor shall include in his bid all costs for the above requirements. Full compensation for the project shall be considered as included in the Bid Schedule and no additional allowance will be made unless mutually agreed upon in writing.

### 4.4 Permits and Fees

Contractor shall secure at his own expense all permits and/or licenses necessary to the prosecution of the contract work.

### 4.5 Priority Connections

The City reserves the right to require that certain connections to existing waterlines be completed as first priority work to avoid shut-down of City facilities. Information regarding and required priority connections will be made available to the Contractor at the pre-construction conference.

#### 4.6 Data to be Submitted by Contractor

Contractor shall submit to the City for approval shop drawings, technical data sheets and schedule. No pipe, equipment, and other facilities shall be manufactured until the drawings have been approved. Owner may require electronic color copy (PDF) and/or five (5) copies of submittals. The Owner will review and return the initial submittals within ten (10) working days. Resubmittals will be reviewed and returned within five (5) working days following receipt.

The City's approval shall not relieve the Contractor from having the entire responsibility for the correctness of details. The Contractor shall assume all responsibility and risk for misfits due to any errors in the Contractor's submittal data. The Contractor is hereby notified that any proposed deviation for the contract document shall be clearly indicated on each submittal; and if not so, submittal may be subject to rejection.

The Contractor shall, within ten (10) calendar days (immediately after issuance of the "Notice to Proceed"), perform and complete pre-construction video and audio of the project site.

The Contractor shall, prior to preparation of pipe shop fabrication drawings (immediately after the "Notice to Proceed"), determine in field the O.D. cylinder dimension of the existing pipelines at all connections, and shall be responsible for all field measurements at his own costs.

Contractor shall prepare a potholing report documenting field data including, but not limited to sheet number, stationing, utility, size, depth and conflict. Contractor shall submit the pothole report within fifteen (15) calendar days from "Notice to Proceed". Contractor shall either identify the conflicting utility or confirm there is no conflict per his pothole data.

In addition to the above, the Contractor shall submit to the City for approval, manufacturer's data sheets, brochures, etc. for appurtenant materials, shoring and bracing design, etc. A list of the minimum required submittals is as follows:

- (a) Altitude Valves and Controller
- (b) Pre-Cast Valve Vaults
- (c) Vault Hatches
- (d) Pipe Layout/Modification Drawings
- (e) Butterfly Valves
- (f) Air Valve
- (g) Pipe Saddle
- (h) Steel Pipe Materials and Lay Drawings
- (i) Copper Pipe
- (j) Conduits
- (k) Electrical Pull Boxes
- (l) Warning Marking Tape
- (m) Pipe Bedding Material
- (n) Structural Fill Material
- (o) Schedule of Values
- (p) Construction Schedule

- (q) Potholing Report
- (r) SWPPP/BMP/MP
- (s) Pipeline Testing and Disinfection Procedures
- (t) Copies of Permits and Riders Required to be Obtained by Contractor
- (u) Pre-Construction Video
- (v) Maintenance of operations schedule for shut-downs, system connections, and start up.
- (w) High Line procedures (if used)
- (x) Tank residual management including chlorination and mixing methods (if used)

#### 4.7 Potholing of Existing Utilities by Contractor

The existing utilities on the construction drawings are shown from a record. Contractor shall field determine the exact location and depth of all existing underground interference and immediately notify the City in the event there is a conflict with the proposed pipeline alignment or grades. Contractor shall "pothole" all utility line crossings. The Owner reserves the right to make minor adjustments in alignment and grade, **all at no additional cost to the Owner and no time extension will be awarded.**

As provided in Section 4216 of the California Government Code, at least two (2) working days prior to commencing any excavation, if the excavation will be conducted in an area which is known, to contain subsurface installations, the Contractor shall contact the regional notification center (Underground Service Alert of Southern California) and obtain an inquiry identification number

#### 4.8 Pipeline Cover

All pipelines shall be installed with no less than 48" of cover unless otherwise shown on the Drawings or approved by the City.

#### 4.9 Connections to Existing Water System

Contractor shall furnish and install connections to the existing water system at locations shown on Drawings, and perform all work required including any necessary field measurements, cuts-to-fit, temporary connections, and field fabrications AS REQUIRED TO MEET EXISTING CONDITIONS.

Contractor shall construct all said connections so that any downtime of existing water systems, due to connection work, shall occur during normal working hours as directed by Owner. However, Owner reserves the right to require the connections be made after normal working hours if the conditions warrant.

CONTRACTOR SHALL COOPERATE WITH OWNER IN SCHEDULING ALL CONNECTIONS, AT LEAST FIVE (5) WORKING DAYS IN ADVANCE.

Owner will operate all existing valves necessary for Contractor to accomplish said connection work.

Contractor shall conduct his work activities in order that the existing water system will be kept in service during the work and until after the proposed improvements are operational, and all flows are directed through the new valves.

#### 4.10 Construction Video Photography

(a) Description

This Section covers pre-construction video photography of the work area to support proof of pre-existing conditions and sign locations for visual comparison to the post-construction conditions.

(b) Video Photography

Provide video and audio DVD of the site prior to any kind of removal of materials. The DVD shall be new and previously unexposed and shall be playable on a DVD player and computer.

The video company shall be a professional photographer approved by the Owner. The video shall be in full color.

(c) Description

Identify each DVD on its cover. List name of project, orientation of view, date and time of view, name and address of photographer.

(d) Technique

Provide factual presentation. Provide correct exposure and focus, high resolution and sharpness. Video and audio capture of the construction area from a vehicle moving at a slow rate of speed to permit Owner to view the DVD and determine pre-existing conditions. Provide audio explanation of items which require special notation.

Areas of local distress shall be video captured with the camera held without moving, using zoom control to record details.

(e) Submittals

Contractor shall deliver the DVD within three (3) calendar days after exposure with transmittal letter. The Owner will retain one of each DVD which will be the permanent record.

#### 4.11 Protection of Existing Improvements, Restoration of Work Site and Disposal of Spoil And Waste Materials



Contractor shall complete operations so that existing improvements (including road and other paved surfaces adjacent to or in the vicinity of the work site) are not damaged. Contractor shall repair and restore, at Contractor's expenses, all disturbed or damaged improvements which results from Contractor's operations.

All work sites shall be restored to pre-job conditions and shall meet the requirements of City, Agencies who have jurisdiction. The Contractor shall repair or replace at his expense the damages as directed by City.

The City is obligated to keep visual impact of the work sites to a minimum; therefore, the Contractor is required to restore all areas altered by construction to pre-existing conditions, unless shown otherwise on the Drawings. Such areas shall include, but shall not be limited to areas used for access, equipment and materials or adjacent areas impacted by facilities construction.

The Contractor shall be responsible for the proper disposal of all waste materials resulting from project operations, including rubbish, packaging materials, discarded equipment parts, and damaged construction materials, in a manner and at locations suitable to the City and all health and other regulatory agencies.

#### 4.12 Geological Information

It is the Contractor's responsibility to examine the site and perform any and all testing and evaluations necessary from which to draw conclusions regarding:

- (1) The ease or difficulty of excavation.
- (2) The presence, nature and extent of any rock.
- (3) The depth and quantity of groundwater.
- (4) The stability of excavations.
- (5) The suitability and quantity of excavated materials for pipe bedding and backfill or sources for importing bedding and backfill materials.
- (6) All excavation shall be unclassified and it shall be the Contractor's responsibility prior to submitting his proposal to familiarize himself with the conditions that he may encounter during construction of the Contract Work. All costs for excavation for all soils conditions (including any groundwater or required rock excavation) shall be included in the Contractor's applicable bid prices for constructing the various improvement facilities and no additional compensation shall be made therefore.
- (7) A geotechnical investigation and report was not prepared for this project.

Where investigations of subsurface conditions have been made by the City in respect to foundation or other structural design, and that information is shown in the plans, or included in the Specifications, said information represents only the statement by the City as to the character of material which has been actually encountered by it in its investigation, and is only included for the convenience of bidders. Investigations of subsurface conditions are made for the purpose of design, and the City assumes no responsibility whatever in respect to the sufficiency or accuracy of borings or of the log of test borings or other preliminary investigations,

or of the interpretation thereof, and there is no guaranty either expressed or implied, that the conditions indicated are representative of those existing throughout the work, or any part of it, or that unlooked for developments may not occur. Making such information available to bidders is not to be construed in any way as waiver of the provisions of the first part of this article and bidders must satisfy themselves through their own investigations as to conditions to be encountered.

Any geotechnical material contained in these or other documents provided by the City is intended only to assist Contractor in preparing his bid and to provide information regarding geotechnical construction requirements. The City does not guarantee the present or future validity of this material, and the material is in no way to be construed as a warranty of geologic conditions. Personal investigation by the Contractor is mandatory so that he can satisfy himself with regard to all geologic conditions affecting the Work hereunder. All costs for excavation for all soils and soils conditions shall be in the Contractor's bid prices for the applicable site Work and facilities, and no additional compensation shall be made therefore.

#### 4.13 Demolition, Salvage and Abandonment

Water pipeline facilities shall be demolished as required for the installation of improvements as part of this project. Procedures for demolishing of said facilities are outlined in the Green Book and on the plans and specifications as applicable.

The Contractor shall properly dispose of buried pipelines proposed to be removed, backfill and compact per plans, specifications and Green Book. Contractor shall cut/remove all abandoned water facilities, appurtenances, risers, valve cans, etc. backfill, compact and restore surface to match surroundings.

Any appurtenances (valves, air valves, blow-offs, hydrants, etc.) requiring removal shall be removed and salvaged to the City. Contractor shall transport and deliver to the City's Water Maintenance Yard located at 3333 N. Bluff Street, Banning, CA 92220 (near intersection of Bluff Street and Mias Canyon Road).

#### 4.14 Restoration of Non-Paved Areas

For all disturbed non-paved areas, unimproved areas, trails, storm drain crossings, access road, etc. due to Contractor's activities. Contractor shall restore and re-compact these in kind. Contractor shall coordinate with and restore said areas to the satisfaction of the City's inspector, and agencies/ entities having jurisdiction of said properties. Contractor shall provide for all equipment, effort, labor, materials all at no additional cost to the contract.

#### 4.15 Schedule of Values

##### (a) General

Contractor shall provide a Schedule of Values (cost breakdown of ALL lump sum bid items) for the contract work. The Schedule of Values shall be subject to Owner review and approval.

All lump sum items ("LS" as listed on the Bidding Sheet) shall be paid for at the price indicated in the Bid; with the exception that if no work is performed on a particular bid item or the item is deleted by the Owner, then that particular item will become a "no pay" item. In the event a portion of the lump sum bid item is provided, that completed portion will be paid in accordance with the approved cost item breakdown (Schedule of Values).

The lump sum bid price shall include furnishing all labor, materials, equipment, methods, etc. necessary to complete the work for the specified bid item as described on the Bidding Sheet, the Plans and Specifications.

(b) Schedule Of Values

Within ten (10) days following the date the Owner issues the written "Notice to Proceed", Contractor shall submit a detailed price breakdown ("Schedule of Values") of all lump sum bid items indicated on the Bidding Sheet. The price breakdown shall include quantities, unit prices and any other information required insufficient detail to enable it to be used by Owner in reviewing and approving Contractor's progress pay estimates. Such price breakdown shall be in accordance with the bid items and sub-items indicated on the Bidding Sheet and the major components of the Work as contained in the Contract Documents. Include all subcontractor/supplier agreements showing the dollar value of these agreements to justify the schedule of values, and showing separate line items for the material costs and installation costs. Provide any separate material cost breakdowns that may be required pursuant to the Special Provisions. The price breakdown shall be subject to Owner approval.

#### 4.16 Storm Water Runoff Control Program

A. General

(1) Description

- a. This section describes work necessary by the Contractor to allow the Owner to comply with the existing California State Water Resources Control Board (SWRCB) General Construction Activity Storm Water Permit (general permit) for discharges of storm water associated with construction activities as the permit requirements are edited to fit. Specifically, this includes the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP) and Monitoring Program (MP). The work must reflect the Contractor's experience, resources, and capabilities in determining and meeting the requirements of the general permit; and said work and compliance shall be the complete responsibility of the Contractor.
- b. Disposal of construction water from operations such as groundwater dewatering and water used for testing, disinfecting, and flushing pipelines is

not part of the work under this section. This work is under the separate NPDES permit as applicable.

(2) General Construction Activity Storm Water Permit

- a. The Contractor shall read and be familiar with all requirements contained in the general permit necessary to develop SWPPP and MP. Attention is directed to the publication entitled "Storm Water Quality Handbooks" which have been prepared by the state and should assist the Contractor in the development of the SWPPP. Copies of the handbooks may be downloaded from the following website: <http://www.dot.ca.gov/hq/construc/stormwater/manuals.htm>, and the construction BMP Handbook may be purchased at <https://www.casqa.org/resources/bmp-handbooks>.
- b. The Contractor shall note that compliance with the requirements contained in the General Permit may require the use of erosion and sedimentation control procedures outside the limits of immediate construction activity.

(3) Notice Of Intent

The General Permit may require the Owner to file a Notice of Intent (NOI) with the SWRCB. A signed copy of this NOI with the assigned WDID number must be included in the SWPPP. The Contractor shall file the NOI with the SWRCB and provide a copy to the Owner.

(4) Submittals

Submit the SWPPP and MP

(5) Measurement and Payment

- a. All costs to the Contractor for preparing the SWPPP and MP for the Owner's approval shall be included in the lump sum or unit prices bid for the work.
- b. In addition, the Contractor shall be responsible for all of his costs associated with the implementation of the SWPPP and coordination with the Owner for the Owner's implementation of the MP, including the installation, maintenance, and removal of erosion control practices specified in the SWPPP upon completion of the project or as requested by the Owner's Representative. These costs shall be included in the prices shown for the other relative bid items.

B. Materials

(1) Storm Water Pollution Prevention Plan

The Contractor shall develop an SWPPP in accordance with the requirements specified in the General Permit.

(2) Monitoring Program

The Contractor shall develop an MP in accordance with the requirements specified in the General Permit.



## (3) Other Products

Products to be determined by the Contractor for use in his development and implementation of the SWPPP and MP.

## C. Execution

## (1) General

- a. The SWPPP and MP shall be developed, submitted, and accepted by the Owner prior to commencement of construction activities in the field.
- b. The Contractor shall comply with all conditions identified in the general permit, which could apply to the work under this contract.
- c. The Contractor shall be responsible for the compliance of his personnel and subcontractors with the SWPPP and for cooperation with the Owner in the implementation of the MP.
- d. The SWPPP shall be kept on site during construction activity and made available upon request of a representative of the RWQCB and/or other regulatory agency.
- e. The Contractor shall amend the SWPPP whenever there is a change in construction or operations which may affect the discharge of significant quantities of pollutants to surface waters, ground waters, or a municipal storm sewer system.

## (2) Storm Water Pollution Prevention Plan

The SWPPP shall provide a description of potential sources which are likely to add significant quantities of pollutants to storm water discharges or which may result in nonstorm water discharges from the construction site. A description of the items required to be included in the SWPPP is included in the general permit under Section A, "Storm Water Pollution Prevention Plan."

## (3) Monitoring Program

- a. The Contractor shall develop an MP as identified in the general permit under Section B, "Monitoring Program and Reporting Requirements."
- b. The Owner will implement the MP developed by the Contractor; however, the Contractor shall also be responsible for monitoring his actions and the activities of those responsible to the Contractor.
- c. The Contractor shall allow representatives of the Owner, RWQCB, and/or other regulatory agencies to enter upon the construction site, inspect the construction site for compliance, and sample and monitor the construction site discharges.
- d. The MP will extend past the completion date for this contract. The Contractor's responsibilities for the MP will cease upon acceptance by the Owner of all work under the contract.

## (4) Duty To Comply

- a. The Contractor shall comply with all conditions identified in the general permit and the SWPPP. Nonadherence with the conditions specified in the general permit may constitute a violation of the Clean Water Act and the

Porter-Cologne Water Quality Control Act and may be grounds for enforcement action by the RWQCB.

- b. The Contractor shall take all reasonable steps to minimize or prevent any discharge in violation of the general permit.
- c. Contractor shall be responsible for all costs, fines, and/or penalties which may be imposed by any regulatory agency resulting from non-compliance with the provisions described herein.

(5) Compliance Certification

- a. An officer or other authorized representative of the Contractor shall certify in writing to the Owner annually and at the completion of construction if it occurs before the next annual report that its construction activity is and has been in compliance or has been modified to comply with the requirements of the general permit and the SWPPP.
- b. If the Contractor determines that he cannot certify compliance with any of the general permit and SWPPP requirements, he shall notify the Owner immediately. The notification shall identify the type of noncompliance, describe the actions necessary to achieve compliance, and include a time schedule when compliance will be achieved. Each noncompliance notification to Owner shall be submitted within fifteen (15) days of identification of the event by the Contractor.

#### 4.17 Rock Excavation

Contractor shall be responsible to excavate rock by using heavy excavation machines (CAT345), grinding machine, jack hammer and other methodologies. No blasting is allowed.

#### 4.18 Welding Fire Protection

Contractor shall be solely responsible to avoid fire by his welding operations.

#### 4.19 Additional Insured

The liability insurance referenced in the General Conditions in this specification shall include the following as additional insured: City of Banning and County of San Bernardino.

#### 4.20 Miscellaneous Special Conditions

##### A. Project Meeting

##### (1) Attendees

Unless otherwise specified or required by the Owner, the meetings shall be attended by the Owner, the Engineer, the Inspector, and the Contractor and his



Superintendent. Subcontractors may attend when involved in the matters to be discussed or resolved but only when requested by the Owner, Engineer, or Contractor.

(2) Meeting Records

The Owner or the Engineer will record minutes of each meeting and will furnish copies to the Contractor within five (5) working days thereafter. If the Contractor does not submit written objection to the contents of such minutes within five (5) days after presentation to him, it shall be understood and agreed that the Contractor accepts the minutes as a true and complete record of the meeting.

(3) Meeting Schedule

The dates, times and locations for the progress meetings shall be agreed upon and recorded at the preconstruction conference. Then after, changes to the schedule shall be by agreement between the Owner and Contractor with appropriate written notice to all parties involved.

(4) Preconstruction Conference

Prior to issuance of the Notice to Proceed, a preconstruction conference shall be held at the location, date, and time designated by the Owner. In addition to the attendees named herein, the meeting shall be attended by the representatives of regulatory agencies having jurisdiction of the Project, Owners, and Operators of affected utilities, if required, and such other persons the Owner may designate.

(5) Execution and Submittal of Documents

At the preconstruction conference, unless otherwise specified or agreed by the Owner and Contractor, the Contract Agreement shall be executed by the parties hereto and the Contractor shall present to the Owner the Bonds, certificates of insurance, progress schedule, schedule of values, written safety program, and all other preconstruction documents required of him by the Contract Documents.

(6) Agenda

In general, the matters to be discussed or resolved and the instructions and information to be furnished to or given from the Contractor to the Owner at the preconstruction conference include:

- a. Progress meeting schedule.
- b. Progress schedule and schedule of values submitted by Contractor.
- c. Communication procedures between the parties.
- d. The names and titles of all persons authorized by the Contractor to represent and execute documents for him with samples of all authorized signatures.
- e. The names, addresses, and telephone numbers of all those authorized by the Contractor to act for him in emergencies.
- f. Construction permit requirements, procedures, and posting.
- g. Public notice of starting Work.
- h. Procedures concerning the installation of Work on public or private property not owned by the Owner.
- i. Interfaces with other Contractors or with utility owners.
- j. Access and rights-of-way furnished by the Owner.
- k. Forms and procedures for Contractor's submittals.
- l. Change Order forms and procedures.

- m. Payment application forms and procedures and the revised progress schedule and reports to accompany the applications.
- n. Contractor's safety and training program, and designation of the Contractor's Safety Officer and his qualifications.
- o. First-aid and medical facilities to be furnished by Contractor.
- p. Contractor's provisions for barricades, traffic control, utilities, sanitary facilities, and other temporary facilities and controls.
- q. Project sign for Owner if required by the Specifications.
- r. Engineer, Inspector and his duties.
- s. Construction surveyor and initiation of surveying services.
- t. Testing laboratory or agency, and testing procedures.
- u. Methods of construction proposed by the Contractor.
- v. Equipment proposed for use during construction by the Contractor.
- w. Procedures for payroll and labor cost reporting by the Contractor.
- x. Procedures to ensure nondiscrimination in employment on and for the Work.
- y. Issuance of the Notice to Proceed.
- z. Matters concerning construction within the City/County (traffic, police, fire, mail and waste collection services).

(7) Progress Meetings

The meetings shall be held on a bi-weekly basis in accordance with the agreed schedule. All matters bearing on the progress and performance of the Work since the preceding progress meeting shall be discussed and resolved, including without limitation any previously unresolved matters, deficiencies in the Work or the methods being employed for the Work, and problems, difficulties, or delays which may be encountered.

(8) Special Meetings

Upon appropriate notice to the other parties, special meetings may be called by the Owner, Engineer, or Contractor. Special meetings will be held where and when designated by the Owner unless the matters are otherwise resolved at the preconstruction conference or at subsequent progress meetings.

(9) Regulatory Agencies

When requested, the Contractor shall attend meetings held or required by the governmental regulatory agencies having jurisdiction of the Project or by various California State agencies or Owners of affected utilities.

B. Reimbursement To Owner For Compaction Re-Tests

The Owner will arrange for a soils engineering laboratory to perform the compaction testing for the project. The Owner will pay for required compaction tests, with the exception that the Owner shall be reimbursed by the Contractor for any compaction tests that fail to meet the minimum relative compaction requirements. The Bidder is hereby notified that the amount of the reimbursement to the Owner shall be no less than Ninety-Five Dollars (\$95.00) for each required retest for insufficient compaction, said amount includes costs for testing, overhead and administration.

C. Contractor's Field Superintendent

The Contractor shall be required to have a field superintendent, from his organization at the jobsite during construction activities to manage the affairs of the Contractor and

to receive directions or instruction from the Owner. Contractor shall provide the Owner with a 24 hour emergency phone number for the field superintendent prior to beginning of construction.

D. Cooperation With Other Contractors

The Contractor shall cooperate with other contractors that are working within the project area, as directed by the Owner.

E. As-built Drawings

The Contractor shall be responsible for maintaining one up-to-date set of as-built drawings, on the job site, available for review by the Owner representative. These drawings shall be clean, neat, legible and show deviations from the original plan design. This set of as-built drawings shall be submitted for review on a monthly basis and given to Owner upon project completion. The Notice of Completion will not be filed until Owner receives the as-built drawings.

Failure to provide acceptable up-to-date as-built drawings as required herein is considered a material breach of the Contract and shall result in withholding of progress payments and/or final payment at the sole discretion of Owner. Failure to submit the final as-built drawings shall of and by itself, be grounds for assessment of liquidated damages not withstanding any other contractual action which may be taken.

Full compensation for conforming to the above requirement will be considered as included in the prices bid for various contract items of work and no additional compensation will be allowed therefore.

## PART 2 – TECHNICAL SPECIFICATIONS

## 4.21 Precast Concrete Vaults

A. Description

This section includes the materials, manufacture, and installation of precast concrete vaults, vault frames and covers.

B. Submittals

- (1) Detailed layout drawings showing all dimensions, thicknesses, locations and sizes of all penetrations and openings.
- (2) Access hatch cut sheet and dimensional drawings.
- (3) Stamped calculations and drawings by a California Registered Engineer.

C. Materials

- (1) Precast concrete vaults and covers shall be manufactured in a plant specifically designed for that purpose and shall conform to the shapes and dimensions indicated on the plans.
- (2) Design loads shall consist of dead load, live load, impact, and in addition, loads due to water table and any other loads, such as surcharge loads, that may be imposed upon the structure. Load rating shall be as indicated on the Drawings per AASHTO standard specifications for highway bridges. The live load shall be that which produces the maximum shears and bending moments in the structure.
- (3) Concrete shall have minimum compressive strength of 4,000 psi conforming with ASTM C 94.
- (4) The vault floor shall be treated such that a non-skid surface is provided.
- (5) Vaults shall have a removable 12-inch concrete top slab with keyed or staggered joint to prevent horizontal movement.
- (6) Vaults shall be precast in separate bottom and upper sections to allow placement of the water line through the vault. If not provided, the Contractor shall provide assembly joints or other means approved by the City to facilitate the installation of the water line through the vault.
- (6) Precast vault shall be manufactured by Oldcastle Infrastructure, or approved equal.

C. Access Hatches

- (1) Access hatches shall be cast into the concrete vault top. The hatch and all appurtenances shall be flush with the top of the lid.
- (2) All aluminum in contact with concrete shall be coated with a bituminous coating prior to casting into the concrete.
- (3) Access hatches shall be of the type and size shown on the plans.
- (4) All covers must be traffic rated to load requirements shown on the Drawings.
- (5) All hatches shall be fabricated from aluminum with stainless steel fasteners.
- (6) Provide recessed opening handles.
- (7) Provide assisted opening for all doors using springs or gas shocks.
- (8) Provide a 316 SS hold-open arm with a secondary latch mechanism



- (9) Provide recessed padlock hasp.
- (10) Provide a safety chain barrier on all double-door hatches that securely attaches to the doors when in the open position.
- (11) Approved manufacturers: USF Fabrication model AHD, or equal.

D. Joint Sealing Compound

- (1) The joint sealing compound shall be a permanently flexible plastic material complying in every detail to Federal Specification SS S-00210 (GSA-FSS) dated July 26, 1965. "Conseal", "Quickseal," or approved equal.

E. Waterproofing

- (1) Waterproofing shall be applied to all concrete surfaces.
- (2) Waterproofing shall be formulated to comply with Federal Specification SS-A-701. Grace Dehydratine 4 or approved equal.

F. Earthwork

- (1) The Contractor shall prepare an excavation large enough to accommodate the structure and permit grouting of openings and backfilling operations.
- (2) The bottom of the structure shall be placed on 6-inches of compacted, crushed rock sub-base, graded level and to the proper elevation as shown on the plans, unless otherwise indicated by the Engineer.

G. Installation

- (1) Openings or "knockouts" in precast concrete vaults shall be located as shown on the drawings and shall be sized sufficiently to permit passage of the largest dimension of pipe and/or coupling flange. Upon completion of installation, all voids or openings in the vault walls around pipes shall be filled with 3,000-psi concrete or mortar, using an approved epoxy for bonding concrete surfaces.
- (2) After the structure and all appurtenances are in place and approved, backfill shall be placed such that finished grade is sloped away from vault (in unpaved areas) or such that vault is flush with finished grade (in paved areas) to the original ground line or to the limits designated on the plans, unless otherwise indicated by the Engineer.
- (3) All joints between precast concrete vault sections shall be made watertight using preformed mastic material. The sealing compound shall be installed according to the manufacturer's recommendations to provide a watertight joint that remains impermeable throughout the design life of the structure. All joints shall be filled with dry-pack non-shrink grout.
- (4) Waterproofing shall be applied to the exterior walls of all buried vaults in accordance with the manufacturer's instructions. Protection shall be placed over the waterproofing to prevent damage.

#### 4.22 Altitude Valves

##### A. Description

- (1) This section includes materials, testing, and installation of reservoir altitude valves.
- (2) The altitude valves shall prevent the tanks from overflowing above a "high elevation" set point.
- (3) Electronic Control Altitude Valves shall operate the altitude valve based on a 4-20 mA signal received from the existing level transmitter on the reservoir. The signal shall be processed by a dedicated digital valve controller. When the level in the reservoir reaches a user-defined "high elevation", the controller shall issue a command to close the valve, using a check feature that will not allow additional flow to enter the tank, but still allowing flow out of the tank at all times. Once the level in the tank drops 12" below the user-defined "high elevation", the controller shall open the valve check feature, allowing unobstructed flow in and out of the tank.

##### B. Submittals

- (1) Submit Shop Drawings, manufacturer's catalog data and detail construction sheets showing all valve parts and describing material of construction by material and specification (such as AISI, ASTM, SAE, or CDA).
- (2) Submittal shall include valve dimensions including laying lengths, dimensions and orientation of valve operators, as installed on the valves.
- (3) Submit manufacturer's recommended maximum operating pressure and maximum recommended flow.
- (4) Submittals shall indicate valve linings, coatings and electrical appurtenances and manufacturer's paint numbers listed.
- (5) Submit certification from manufacturer stating that valve has successfully passed hydrostatic tests in accordance with AWWA C509.
- (6) Submit proof of NSF certification for the lining materials to be used.
- (7) Submit complete installation, operation and maintenance manuals including test reports, headloss curves, maintenance data and schedules, description of operation and spare parts information.
- (8) Provide 3 hard copies and one electronic copy in pdf format with searchable text.
- (9) Submit Manufacturer's Installation Certification Form after installation and testing of the valve.

##### C. Delivery, Storage, and Handling

- (1) Valves shall not be stored in contact with bare ground and valves shall not be stacked.
- (2) The port openings shall be covered with plastic, cardboard or wood while in transit and during storage in the field.
- (3) These covers shall remain in place until valves are ready to be installed.
- (4) Valves shall be delivered and stored in accordance with AWWA C550.

##### D. Materials



- (1) All valves shall have a rated minimum working pressure of at least 150 psi and shall be of appropriate pressure class for the pipe connecting to them.
- (2) Painting and Coating: All valves shall be painted and coated, interior and exterior, with factory-applied fusion bonded epoxy.

E. Control Valve Information

- (1) Valve size: As shown on the Drawings
- (2) Working pressure: 150 psi
- (3) The main valve shall be hydraulically operated, single diaphragm actuated, globe pattern. The valve shall consist of three major components; the body with seat installed, the cover with bearing installed and the diaphragm assembly. The diaphragm assembly shall be the only moving part and shall form a sealed chamber in the upper portion of the valve, separating the operating pressure from line pressure. Packing glands, stuffing boxes and/or rolling diaphragm technology will not be permitted and there shall be no pistons operating the main valve or pilot controls. No fabrication or welding shall be used in the manufacturing process. Y-pattern valves shall not be permitted. Main valve shall be certified by NSF/ANSI Standard 61 as a safe drinking water system component.
- (4) End Connections for control valve shall be flanged per ASME/ANSI B16.42, Class 150.
- (5) No separate chamber(s) below the diaphragm shall be allowed between the main valve cover and body. No fabrication or welding shall be used in the manufacturing process.
- (6) The valve shall contain a resilient, synthetic rubber disc with a rectangular cross-section contained on three and one-half sides by a disc retainer and forming a tight seal against a single removable seat insert. No O-ring type discs (circular, square, or quad type) shall be permitted as the seating surface. The disc guide shall be of the contoured type to permit smooth transition of flow and shall hold the discs firmly in place. The disc retainer shall be of a sturdy one-piece design capable of withstanding opening and closing shocks. It must have straight edge sides and a radius at the top edge to prevent excessive diaphragm wear as the diaphragm flexes across this surface. No hours-glass shaped disc retainers shall be permitted and no V-type or slotted-type disc guides shall be used.
- (7) The diaphragm assembly containing a non-magnetic stainless-steel stem; of sufficient diameter to withstand high hydraulic pressures and shall be fully guided at both ends by a bearing in the main valve cover and an integral bearing in the valve seat. The valve seat shall be a solid, one-piece design and shall have a minimum five-degree taper on the seating surface for a positive, drip-tight shut off. No center guides shall be permitted. The stem shall be drilled and tapped in the cover end to receive and affix such accessories as may be deemed necessary. The diaphragm assembly shall be the only moving part and shall form a sealed chamber in the upper portion of the valve, separating the operating pressure from the line pressure. No bolts or cap screws shall be permitted for use in the construction of the diaphragm assembly.
- (8) The flexible, non-wicking, FDA approved diaphragm shall consist of nylon fabric bonded with synthetic rubber compatible with the operating fluid. The

diaphragm's center hole for the main valve stem must be sealed by the vulcanized process or a rubber grommet sealing the center stem hole from the operating pressure. The diaphragm must withstand a Mullins Burst Test of a minimum of 600 X per layer of nylon fabric and shall be cyclically tested 100,000 times to insure longevity. The diaphragm shall not be used as the seating surface. The diaphragm shall be fully supported in the valve body and cover by machined surfaces which support no less than one-half of the total surface area of the diaphragm in either the fully opened or fully closed position. Bellofram type rolling diaphragms shall not be permitted.

- (9) The main valve seat and stem bearing in the valve cover shall be removable. The valve seat in the shall be retained by flat head machine screws for ease of maintenance. The lower bearing of the valve stem shall be contained concentrically within the seat and shall be exposed to the flow on all sides to avoid deposits. To insure proper alignment of the valve stem, the valve body and cover shall be machined with a locating lip. No "pinned" covers to the valve body shall be permitted. Cover bearing, disc retainer and seat shall be made of the same material. All necessary repairs and/or modifications other than replacement of the main valve body shall be possible without removing the valve from the pipeline. The valve shall be designed such that both the cover assembly and internal diaphragm assembly can be disassembled and lifted vertically straight up from the top of a narrow opening/vault. Y-pattern valves shall not be permitted. The seat shall be of the solid one-piece design. Two piece seats or seat inserts shall not be permitted. Packing glands and/or stuffing boxes shall not be permitted.

F. Electronic Pilot Control System

- (1) Provide 24 VDC solenoid control pilot system for the Southwest Reservoir Altitude Valve.
- (2) The pilot control shall be through a direct acting solenoid pilot valve controlled by an external VC-22D controller. The pilot control system shall include strainers and solenoid manual by-pass valves. The solenoid pilot valves either add or relieve line pressure from the cover chamber of the main valve, causing it to open or close as directed by the electronic controller. Solenoids shall have NEMA IV enclosures.
- (3) Both power and command signals shall originate from the controller. External power sources shall not be used to operate the pilot system control solenoid.

G. Not Used.

H. Material Specification for Solenoid Pilot Controls:

Component	Material
Body	303 Stainless Steel
Pilot Trim	303 Stainless Steel
Seals and Disc	NBR
Core and Plugnut	430F Stainless Steel
Core Springs	302 Stainless Steel
Shading Coil	Copper

Disc-Holder	CA
Core Guide	CA
Connections	FNPT
Pressure rating	150 psi
Power Supply	24 VDC sourced from electronic controller
Control Tubing	Stainless Steel
Control Fittings	Stainless Steel

I. Required Accessories

- (1) Valve Position Indicator
- (2) Magnetic Latching Solenoid for future use with a seismic sensor
- (3) All manufacturer's "optional" valve accessories required to achieve the altitude valve operation described herein.

J. Factory Assembly

- (1) Each control valve shall be factory assembled.
- (2) The Quality Management System of the factory shall be certified in accordance with ISO 9001: 2008.
- (3) For all control valves, the factory assembly shall include the complete main valve, pilot valve(s), and all associated accessories and control equipment.
- (4) During factory assembly, the control valve manufacture shall make all necessary adjustments and correct any defects.

K. Nameplates

- (1) Each Control Valve and associated pilot(s) shall be provided with an identifying nameplate.
- (2) Nameplates, depending on type and size of control valve, shall be mounted in the most practical position possible, typically on the inlet side of the valve body.
- (3) Nameplates shall be brass and a minimum of 3/32" thick, 3/4" high and 2-3/4" long.
- (4) Pertinent control valve data shall be etched or stamped into the nameplate. Data shall include control valve Catalog number, function, size, material, pressure rating, end-connection details, type of pilot controls used and control adjustment range.

L. Factory Testing

- (1) Each control valve shall be factory tested.
- (2) The Quality Management System of the factory shall be certified in accordance with ISO 9001: 2008
- (3) Tests shall conform to approved test procedures.
- (4) The standard factory tests shall include a valve body and cover leakage test, seat leakage test and a stroke test. Control valves and pilot valves, in the partially open position, with both ends closed off with blind flanges (valves) and pipe plugs (pilots), shall be subject to an air test. The applied air pressure shall be 90 psi minimum. All air pressure tests shall be applied for a minimum of 15 minutes. No visible leakage is permitted through the valve seat, the pressure boundary walls of the valve body, valve cover, pilot body, pilot cover or the body-cover joint.

- (5) Control valve manufacturer shall, upon request, offer additional testing, such as high pressure hydrostatic testing, positive material inspection testing, ferrite testing, liquid penetration inspection testing, magnetic particle examination testing and radiographic examination testing.

M. Warranty

- (1) The Control Valve manufacturer shall warrant the valve to be free of defects in material and workmanship for a period of three years from date of shipment provided the valve is installed and used in accordance with all applicable instructions. Electrical components shall have a one-year warranty.

N. Acceptable Manufacturers

- (1) Cla-Val

O. Delivery

- (1) Valves shall be factory assembled. Any valve appurtenances, accessories, parts and assemblies that are shipped unassembled shall be packaged and tagged in a manner that will protect the equipment from damage and facilitate the final assembly in the field.
- (2) Care shall be taken in loading, transporting and unloading to protect valves, appurtenances, and coatings from damage. Equipment shall not be dropped. All valves and appurtenances shall be examined before installation and no piece shall be installed which is found to be defective. Any damage(s) shall be repaired.
- (3) Prior to shipping, the valves and all associated accessories shall be acceptably packaged and covered to prevent entry of foreign material.
- (4) All valves shall be shipped, remain covered and stored on site until they are installed and put into use.

O. Installation

- (1) Flanges shall be cleaned by wire brushing before installing flanged valves. Flange bolts and nuts shall be cleaned by wire brushing, and threads lubricated with oil and graphite. Nuts shall be tightened uniformly and progressively. If flanges leak under pressure testing, nuts and bolts shall be loosened or removed, the gasket reseated or replaced, the bolts and nuts reinstalled or retightened, and joints retested. Joints shall be watertight.
- (2) Threaded joints shall be cleaned by wire brushing or swabbing. Teflon joint compound or Teflon tape shall be applied to pipe threads before installing threaded valves. Joints shall be watertight.

P. Start Up and Testing

- (1) All valves, 4-inches in diameter and larger, shall be individually pressure tested upon arrival at the construction site. The Contractor shall procure the services of sales representative for the valve or an independent contractor who has the proper equipment to pressure test the valves. The pressure test shall be adjusted to the type and class of valve being tested. The factory certification information shall be available at the site to compare to the test results. Any valve which



exhibits leaking during the test procedure shall be rejected and replaced at no additional cost to the City.

- (2) Make adjustments required to place system in proper operating condition. Field test and calibrate the valve and appurtenances to assure that the system operates in accordance with these Specifications and to the satisfaction of the City.
- (3) A factory-trained representative shall be provided for installation supervision, start-up and test services and operation and maintenance personnel training services. The representative shall make a minimum of 2 visits, minimum 8 hours on-site for each visit, to the site. The first visit shall be for assistance in the installation of valve. The second visit shall be for checking the completed installation, start-up of the system, and to train and instruct the City operations staff on the operation and maintenance of the valve.
- (4) Field testing will incorporate a 24-hour pretest and will require a seven consecutive day successful system operation. The valve manufacturer's representative shall be available during the 24-hour period.
- (5) All costs, including travel, lodging, meals and incidentals, shall be considered as included in Contractor's bid price.
- (6) Contractor to provide signed *Manufacturer's Installation Certification Form* signed by contractor and manufacturer's representative.

## 4.23 Valves

A. Description

- (1) This section includes materials, testing, and installation of manually operated butterfly valves, and combination air release and vacuum relief valves.

B. Reference Standards

- (1) ASTM A307-Standard Specification for Carbon Steel Bolts and Studs, 60 000 PSI Tensile Strength
- (2) ASTM A193-Standard Specification for Alloy-Steel and Stainless Steel Bolting Materials for High-Temperature Service
- (3) ASTM A194-Standard Specification for Carbon and Alloy Steel Nuts for Bolts for High-Pressure or High-Temperature Service, or Both
- (4) ASTM A126-Standard Specification for Gray Iron Castings for Valves, Flanges, and Pipe Fittings
- (5) ASTM A48-Standard Specification for Gray Iron Castings
- (6) ASTM A276-Specification for Hot- and Cold-Finished Bars of Stainless and Heat-Resisting Chromium-Nickel-Manganese Steel
- (7) ASTM B62-Standard Specification for Composition Bronze or Ounce Metal Castings
- (8) AWWA C105-Polyethylene Encasement For Ductile Iron Piping For Water And Other Liquids
- (9) AWWA C500-Gate Valves For Water And Sewerage Systems
- (10) AWWA C504-Rubber Seated Butterfly Valves
- (11) AWWA C509-Resilient Seated Gate Valves For Water And Sewerage Systems
- (12) AWWA C550-Protective Epoxy Interior Coatings For Valves And Hydrants

C. Submittals

- (1) Submit Shop Drawings, manufacturer's catalog data and detail construction sheets showing all valve parts and describing material of construction by material and specification (such as AISI, ASTM, SAE, or CDA).
- (2) Submittal shall include valve dimensions including laying lengths, dimensions and orientation of valve operators, as installed on the valves.
- (3) Submit certification from manufacturer stating that valve has successfully passed hydrostatic tests in accordance with AWWA C509.
- (4) Submit proof of NSF certification for the lining materials to be used.
- (5) Polyethylene wrap for buried valves.
- (6) Manufacturer's data for valve boxes. Identify riser materials.

D. Delivery, Storage, and Handling

- (1) Valves shall not be stored in contact with bare ground and valves shall not be stacked.
- (2) The port openings shall be covered with plastic, cardboard or wood while in transit and during storage in the field.
- (3) These covers shall remain in place until valves are ready to be installed.
- (4) Valves shall be delivered and stored in accordance with AWWA C550.



E. Additional Testing

- (1) Butterfly valves shall be hydrostatically tested and valve coatings shall be holiday detected prior to shipment in the field.
- (2) Valves delivered to the site prior to successful hydrostatic testing and holiday detection shall be subject to rejection.

F. Materials

- (1) All valves shall be new and of current manufacture. The Contractor shall furnish and install each specific type of valve from a single manufacturer and use it throughout the Work. Valves shall be furnished in the sizes and in accordance with the type of ends as shown on the Plans and as herein specified.
- (2) Valves shall be provided with stem extension.
- (3) The manufacturer shall have manufactured tight-closing valves of the valve type intended for use for a period of at least five years.
- (4) All valves shall have a rated minimum working pressure of at least 150 psi and shall be of appropriate pressure class for the pipe connecting to them.
- (5) All valves shall be certified to meet the test pressure as specified and shall have a rated working pressure that exceeds the full working pressure specified.
- (6) Connections: Valves shall have connector ends in compliance with the Standard Design Requirements and as shown on the Plans. Where not indicated, the valves shall have the same type of connection as the pipeline in which valves are to be installed and conform to the Specifications.
- (7) Painting and Coating: All valves referenced in this section shall be painted and coated, interior and exterior, with factory-applied fusion bonded epoxy.

G. Butterfly Valves

- (1) Butterfly valves shall conform to the requirements of AWWA Standard C504.
- (2) Valves shall have a minimum working differential pressure across the valve disc of 150 psi.
- (3) Valves shall be flanged short-body or restrained mechanical joint as indicated on the Drawings.
- (4) Each valve shall be provided with one or more thrust bearings in accordance with AWWA C504. Thrust bearings which utilize a ferrous metal bearing surface in direct rubbing contact with an opposing ferrous metal surface will not be acceptable.
- (5) Valves shall be fitted with sleeve-type bearings. Bearings shall be corrosion resistant and self lubricating. Bearing load shall not exceed 2,500 psi.
- (6) The use of a stop or lug cast integrally with or mechanically secured to the body for the purpose of limiting disc travel by means of direct contact or interference with the valve disc in either the open or closed position will not be acceptable.
- (7) Valve operators shall be designed to hold the valve in any intermediate position between fully opened and fully closed without creeping or fluttering.
- (8) Body: Ductile Iron ASTM A-536, Grade 65-45-12
- (9) Valve Shaft: Stainless Steel Type 304 and Type 316
- (10) Exposed body, cap, screws, bolts and nuts including squeeze-pins: Stainless Steel ASTM A-276, Type 316
- (11) Disc: Ductile Iron ASTM A-536, Grade 65-45-12

- (12) Valve Seat: EPDM Rubber ASTM D-412
- (13) O-Rings: Synthetic Rubber ASTM D-2000
- (14) Valve seat material shall be peroxide cured EPDM rubber seat and shall be fastened integrally with the valve body. The valve disc shall be furnished with a stainless steel seating edge to mate with the rubber seat in the valve body. Valves with the seat located on the disc shall not be accepted. The ductile iron interior and exterior shall be factory coated with NSF 61 approved 16 mils DFT high solids 2 part epoxy of no less than 65% conforming to AWWA standard C550, as manufactured by Amerlock® 400, Tnemec 141, or approved equal.
- (15) Valve operators shall be the manual type. Valve actuator shall be supplied and installed on the valve by the valve manufacturer.
- (16) Gear actuators shall be provided for all butterfly valves.
- (17) Buried service applications and shall come furnished with a standard 2" AWWA operating nut.
- (18) Exposed service applications shall come furnished with a standard handwheel.
- (19) The operators shall be worm gear type.
- (20) Valve shall open with a counterclockwise rotation of the operator.
- (21) Approved Butterfly Valve Manufactures
  - a. Mueller B-3211, Lineseal XP2
  - b. Pratt Groundhog, HP 250
  - c. Clow 4500 Series
  - d. Clow Model # 2638 C515
  - e. US Pipe Model # A-USP2
  - f. Mueller A-2362

H. Air Release and Vacuum Valve

- (1) Automatic air release valve shall have the following components:
- (2) An air and vacuum component that discharges large volumes of air during filling of the system.
- (3) An air and vacuum component admits large volumes of air during drainage and at water column separation.
- (4) An air release component releases entrapped air in pressurized systems.
- (5) Valves and fittings shall equal or exceed the pressure rating of the pipe to which they are attached.
- (6) Valve bodies shall be constructed from reinforced nylon with a brass base.
- (7) Valves shall be ANSI/NSF Standard 61 certified.
- (8) Working pressure: 250 psi
- (9) Orifice seat design: Bronze and EPDM
- (10) Connection size: 2-inch NPT
- (11) Approved Manufacturer: ARI Model D-040-B

I. Air Release and Vacuum Valve

- (1) Valves shall be factory assembled. Any valve appurtenances, accessories, parts and assemblies that are shipped unassembled shall be packaged and tagged in a manner that will protect the equipment from damage and facilitate the final assembly in the field.

- (2) Care shall be taken in loading, transporting and unloading to protect valves, appurtenances, and coatings from damage. Equipment shall not be dropped. All valves and appurtenances shall be examined before installation and no piece shall be installed which is found to be defective. Any damage(s) shall be repaired.
- (3) Prior to shipping, the valves and all associated accessories shall be acceptably packaged and covered to prevent entry of foreign material.
- (4) All valves shall be shipped, remain covered and stored on site until they are installed and put into use.

J. Not Used.

K. Valve Installation

- (1) Flanges shall be cleaned by wire brushing before installing flanged valves. Flange bolts and nuts shall be cleaned by wire brushing, and threads lubricated with oil and graphite. Nuts shall be tightened uniformly and progressively. If flanges leak under pressure testing, nuts and bolts shall be loosened or removed, the gasket reseated or replaced, the bolts and nuts reinstalled or retightened, and joints retested. Joints shall be watertight.
- (2) Threaded joints shall be cleaned by wire brushing or swabbing. Teflon joint compound or Teflon tape shall be applied to pipe threads before installing threaded valves. Joints shall be watertight.

## MANUFACTURER'S INSTALLATION CERTIFICATION FORM

Project name: \_\_\_\_\_

Valve Location: \_\_\_\_\_

Valve Serial Number: \_\_\_\_\_

Valve Description: \_\_\_\_\_

Installing Contractor: \_\_\_\_\_

Manufacturer: \_\_\_\_\_

The undersigned manufacturer of the equipment item described above hereby certifies that he has checked the installation of the equipment and that the equipment, as specified in the Contract Documents, has been provided in accordance with the manufacturer's recommendations, the equipment has been installed in accordance with the manufacturer's requirements, and that the trial operation of the equipment item has been satisfactory.

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date\_\_\_\_\_  
Manufacturer\_\_\_\_\_  
Signature of Authorized Representative\_\_\_\_\_  
Date\_\_\_\_\_  
Contractor\_\_\_\_\_  
Signature of Authorized Representative

## APPENDIX A

## BID SCHEDULE

**PROJECT NO. 2018-07W**  
**“ALTITUDE VALVE AT SOUTHWEST RESERVOIR”**

ITEM NO.	DESCRIPTION OF ITEM	QTY	UNIT	UNIT PRICE	AMOUNT
1	<b>Mobilization/Demobilization</b> of construction equipment and posting of OSHA required notices, submittal of preliminary construction schedule, construction submittals, as-builts, facility startup, complying with all applicable permits and notifications including CEQA and monitoring inspections, all other administrative items required for the project.	1	LS	ENTER ELECTRONICALLY IN LINE ITEMS TAB	ENTER ELECTRONICALLY IN LINE ITEMS TAB
2	<b>Furnish and install 16-inch Electronic Altitude Valve</b> , including, but not limited to, all required appurtenances, fittings, testing, and calibration required to provide a complete and functioning system, per plans and specifications. Complete in place.	1	EA	ENTER ELECTRONICALLY IN LINE ITEMS TAB	ENTER ELECTRONICALLY IN LINE ITEMS TAB
3	<b>Furnish and install Electronic Valve Controller</b> , including, but not limited to, power supply and battery, signal splitter, terminal blocks, wiring, conduits, testing, and calibration required to provide a complete and functioning controller per plans and specifications. Complete in place.	1	EA	ENTER ELECTRONICALLY IN LINE ITEMS TAB	ENTER ELECTRONICALLY IN LINE ITEMS TAB
4	<b>Furnish and install 10' x 8' Concrete Vault with 6' x 6' Access Hatch</b> , including but not limited to, all required excavation, fill and compaction, per plans and specifications. Complete in place.	1	EA	ENTER ELECTRONICALLY IN LINE ITEMS TAB	ENTER ELECTRONICALLY IN LINE ITEMS TAB
5	<b>Furnish and install 16-inch Welded Steel Pipe, Fittings, and Appurtenances</b> , including, but not limited to, removal of existing pipe, trenching, hydrostatic testing, disinfection, tracer wire, fittings, warning tape, pipe supports, connections to existing pipe, per plans and specifications. Complete in place.	21	LF	ENTER ELECTRONICALLY IN LINE ITEMS TAB	ENTER ELECTRONICALLY IN LINE ITEMS TAB
6	<b>Furnish and install 16-inch Butterfly Valve</b> with operator, per the Drawings and Specifications. Complete in place.	1	EA	ENTER ELECTRONICALLY IN LINE ITEMS TAB	ENTER ELECTRONICALLY IN LINE ITEMS TAB
7	<b>Furnish and install 2" Air Release/ Vacuum Valve</b> , per Drawings and Specifications, including copper line, pipe, fittings, concrete pad, cover, and appurtenances, per plans and specifications. Complete in place.	1	EA	ENTER ELECTRONICALLY IN LINE ITEMS TAB	ENTER ELECTRONICALLY IN LINE ITEMS TAB

ITEM NO.	DESCRIPTION OF ITEM	QTY	UNIT	UNIT PRICE	AMOUNT
8	<b>Furnish and install 4-inch Drain Line with connections</b> , per the Drawings and Specifications, including pipe and appurtenances, trenching, excavation, connection to existing drain line, and all appurtenances required. Complete in place.	26	LF	ENTER ELECTRONICALLY IN LINE ITEMS TAB	ENTER ELECTRONICALLY IN LINE ITEMS TAB
9	<b>Sawcut, remove and replace existing AC pavement and base</b> with 3-inch AC cover over 6-inch AB to replace the removed and disturbed pavement as required for the work per the Plans and Specifications, including but not limited to, equipment, labor, and materials. Complete in place.	1	LS	ENTER ELECTRONICALLY IN LINE ITEMS TAB	ENTER ELECTRONICALLY IN LINE ITEMS TAB

**TOTAL BID AMOUNT IN FIGURES: \$** ENTER ELECTRONICALLY IN LINE ITEMS TAB

(Bid Item No.'s 1 through 9)

**Note:** Upon award of Contract, the contractor will be required to provide the City with a further breakdown of the cost to perform the work.



# APPENDIX B

# 1202

City of Banning Labor Compliance Pre-job Checklist

Revised: 12/2018



## PUBLIC WORKS CONTRACT REQUIREMENTS



<b>Project Title:</b>	
<b>Invitation for Bid #:</b>	<b>Contract Duration:</b> _____ to _____
<b>Description of Project:</b>	
<b>Labor Compliance Contact Information:</b>	Name: Physical Address:  Mailing Address:  Email: Phone:
<b>Prime Contractor:</b>	Name: Physical Address:  Mailing Address:  Email: Phone:
<b>Contractor License #:</b>	<b>Contract Manager:</b>
<b>PWCR #:</b>	<b>Project Manager:</b>

### POSTERS/NOTICES

Contractors are required to post all required state posters on the jobsite in an area accessible to all workers, including subcontractors. Posters must be readable and placed in visible areas allowing workers to access the posters before, during, and after work shifts. Jobsites with multiple locations must include a portable poster board to ensure continued access to the information. Posters placed in foreman, supervisor, or employee vehicles, in an offsite job trailer, or inside a temporary restroom **do not** meet the posting requirement.

☐ State general prevailing wage determinations in effect on date advertised

General prevailing wage determination \_\_\_\_\_

Journeyman and Apprentice Prevailing Wage Rates can be accessed at the following website:  
<http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm> Reference: California Labor Code Section (LC §) 1773.2

Signature of Prime Contractor: \_\_\_\_\_ Project No.: \_\_\_\_\_ Page 1 of 5

## PREVAILING WAGE REQUIREMENTS

- ☐ All workers employed in the execution of a public works project, including sole proprietors, partners, and corporate officers, must be paid not less than the specified prevailing wage rates for the type of work performed. *Reference: LC §1774*
- ☐ Contractors utilizing an entity for the purpose of hauling or delivery of ready-mixed concrete are required to enter into a written subcontract agreement with the entity. *Reference: LC § 1720.9*
  - ⇒ Workers employed in the hauling and delivery of ready-mixed concrete must be paid not less than the specified prevailing wage for the type of work performed in the geographic location of the plant/batch facility. *Reference: LC § 1720.9*
- ☐ Overtime must be paid for all hours over 8 in a calendar day and 40 hours in a week. Violations may subject the contractor to a state penalty. *Reference: LC §1810-1815*
- ☐ Saturday/Sunday premium rates are applicable as indicated on prevailing wage determinations.
- ☐ When required, shift differential rates must be paid for classifications which include a shift determination.
- ☐ **State Prevailing Wages**
  - \* Single asterisk indicates that this wage determination can be used for the life of the contract.
  - \*\*Double asterisk indicates that this wage determination includes predetermined increases.
- ☐ Subsistence/Zone pay must be shown on the fringe benefit statement if not shown on certified payroll.
  - ⇒ The contractor must make applicable travel and subsistence payments in accordance with information on file with the California Department of Industrial Relations (DIR) for classifications utilized. Contact the Prevailing Wage Unit at (415) 703-4774 or available on DIR's Web site at: <http://www.dir.ca.gov/dlsr/PWD/index.htm> *Reference: LC §1773.1*
- ☐ Contractors violating prevailing wage requirements are subject to a penalty to be paid in addition to any wage underpayments. Liquidated damages in the amount of the wage underpayments may also apply. *Reference: LC §1775 and §1742.1*

## PAYROLL REQUIREMENTS

- ☐ Labor Classification Survey form shall be completed by the prime and subcontractors and Submitted by the Prime to the City at the beginning of the project.
- ☐ All labor compliance documents submitted must be complete and accurate, and require the correct contract number.

- ☐ Certified payrolls must be completed weekly and documents are due with invoice. *Reference: LC §1771.5*
- ☐ Certified payrolls must include ALL information as required by Labor Code 1776, *Contractor/Subcontractor Payroll. Reference: LC §1776*
- ☐ Certified payrolls shall display employee social security numbers OR if desired, the last 4-digits of the SSN may appear on the payroll documents if a "Master Key" of social security number is provided.
- ☐ Classification and group numbers are required on all payrolls (i.e., Laborer-Group 1, Plumber-Pipefitter, etc.). When work classification is not shown or a misclassification has been identified, the City of Banning will determine the wage rate based on duties performed. *Reference: LC §1776*
- ☐ Payrolls must clearly show how gross and net wages are calculated, including fringe benefits.
- ☐ A *Statement of Compliance* is due with each weekly payroll. Boxes must be marked indicating if benefits are paid to a fund or to the employee(s). All deductions marked "other" must be explained on the payroll or the Statement of Compliance (i.e. garnishments, tools, etc.).  
*Reference: LC §1776*
- ☐ All deductions marked "other" (i.e. garnishments, tools, etc.) must be explained on the payroll or the Statement of Compliance. Source documents to confirm the "other" deduction that meet requirements of an authorized payroll deduction are to be submitted on the first payroll which the deduction appears. Authorization for "Other" Payroll Deduction form is required to be submitted to the City.
- ☐ A *Fringe Benefit Statement (Statement of Employer Payment form)*, must be completed and signed showing hourly rates and the name and address of the plan(s) whenever fringe benefits are paid to a plan, fund or program. The form must be submitted with the first payroll and when fringe benefits or subsistence amounts change. Statements must be specific to the contract. *Reference: LC §1773.1*
- ☐ All contractors are required to provide itemized wage statements (check stubs) to employees.
- ☐ A *Statement of Non-Performance* is required during the project weeks that work is not performed.
- ☐ Failure by the prime to submit the required reports or documents will result in all payments due to the contractor being withheld until the next invoice after compliance. *Reference: LC §1771.5*
- ☐ City of Banning *Owner-Operator Listing* form, may be used when owner-operators are performing on the project. *Reference: LC §1776*
  - ⇒ The contractor employing an equipment owner-operator must complete the owner-operator listing. Forms will not be accepted from the equipment owner-operator unless the hiring contractor signs the owner- operator Statement of Compliance.
- ☐ Whenever an entity is used in the hauling or delivery of ready-mix concrete the following documentation must be provided:
  - ⇒ A copy of the written agreement between the entity hauling/delivering ready-mix

Signature of Prime Contractor: \_\_\_\_\_ Project No.: \_\_\_\_\_ Page 3 of 5

concrete and the contractor is required to be submitted with the first payroll which the entity performed work.

- ⇒ The contractor is required to submit a copy the driver's certified time records to the City of Banning with the payroll submission. *Reference: LC § 1720.9*

- ☐ Certified payrolls may be maintained and submitted electronically utilizing the Department of Industrial Relations Reporting form (State).
  - ⇒ Submissions must be in an unmodifiable PDF format and contain all information required by California Labor Code Section 1776.
  - ⇒ The prime contractor and each subcontractor must complete and submit a Certification of Authorization form to the City of Banning certifying that the principals and authorized payroll officer understand the requirements.
  - ⇒ Certified payrolls shall be submitted to the City of Banning and must only contain only one week ending per submittal. Electronic submittals may be sent to [hstuart@ci.banning.ca.us](mailto:hstuart@ci.banning.ca.us) or hardcopies are acceptable as well.
  - ⇒ The prime contractor shall be responsible for providing all subcontractor payroll records to the City.

## APPRENTICES

- ☐ All requirements of California Labor Code, Section 1777.5 apply for classifications which DIR has identified as an apprenticeship craft, including the following:
  - ⇒ Submit DIR's Division of Apprenticeship Standards (DAS) form DAS-140, *Public Works Contract Award Information*, to the applicable apprenticeship committee prior to start of work. Form may be downloaded at: <http://www.dir.ca.gov/DAS/PublicWorksForms.htm>
  - ⇒ Classifications that are an "apprenticeship craft" shall contribute training funds to an approved training program.
  - ⇒ Training fees MUST be sent to a state-approved apprenticeship program or the California Apprenticeship Council.
  - ⇒ Apprentices must be paid the prevailing wage rate applicable to the classification in which they are registered and employed.
- ☐ Complaints or violations regarding apprentice ratios will be referred to DAS.
- ☐ Proof of registration in a state-approved apprenticeship program will be required and must be submitted with the first payroll on which apprentices appear. *Reference: LC §1777.5 An Apprentice Certification Letter is acceptable proof.*
- ☐ If an apprentice is required but not provided by the Division of Apprenticeship, then solicitations submitted by the contractor/subcontractor to the DAS attempting to obtain an apprentice shall be submitted to the City.

**ACKNOWLEDGMENT**

**I acknowledge that I have been informed and am aware of the Public Works requirements listed above and that I am authorized to make this certification.**

**CONTRACTOR :** \_\_\_\_\_

**AUTHORIZED NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**AUTHORIZED SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**PHYSICAL ADDRESS:** \_\_\_\_\_

**MAILING ADDRESS:** \_\_\_\_\_

**EMAIL ADDRESS:** \_\_\_\_\_ **PHONE:** \_\_\_\_\_

**PAYROLL CONTACT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**E-MAIL ADDRESS:** \_\_\_\_\_ **PHONE:** \_\_\_\_\_



## CITY OF BANNING LABOR CLASSIFICATION SURVEY



PROJECT NAME: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

SUBCONTRACTOR: \_\_\_\_\_

### CLASSIFICATIONS

BRICKLAYER \_\_\_\_\_

LABORERS: GROUP 1 \_\_\_\_\_

CARPENTERS \_\_\_\_\_

GROUP 2 \_\_\_\_\_

CEMENT MASONS \_\_\_\_\_

GROUP 3 \_\_\_\_\_

DRYWALL HANGERS \_\_\_\_\_

GROUP 4 \_\_\_\_\_

ELECTRICIANS \_\_\_\_\_

GROUP 5 \_\_\_\_\_

IRON WORKERS \_\_\_\_\_

POWER EQUIPMENT OPERATORS

PAINTERS \_\_\_\_\_

GROUPS 1-21 \_\_\_\_\_

PLUMBERS \_\_\_\_\_

ROOFERS \_\_\_\_\_

SHEET METAL WORKERS \_\_\_\_\_

TRUCK DRIVERS

SOFT FLOOR LAYERS \_\_\_\_\_

GROUPS 1-11 \_\_\_\_\_

TILE LAYERS \_\_\_\_\_

LANDSCAPE / IRRIGATION  
FITTERS \_\_\_\_\_

LABORERS – STRIPPING \_\_\_\_\_

ADDITIONAL CLASSIFICATIONS  
(Must be approved by the City)

PLASTERER \_\_\_\_\_

CLASSIFICATIONS

OTHERS \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_





## CERTIFICATION OF UNDERSTANDING AND AUTHORIZATION



Project No: \_\_\_\_\_

Project Name: \_\_\_\_\_

This is to certify that the principals, and the authorized payroll officer, below, have read and understand the minutes of the Pre-Construction Conference and the labor standards clauses pertaining to the subject project.

The following person(s) is designed as the payroll officer for the undersigned and is authorized to sign the Statement of Compliance, which will accompany our weekly-certified payroll reports for this project.

\_\_\_\_\_  
Print or Type Payroll Officer (Name)

\_\_\_\_\_  
Payroll Officer (Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Company Name (Contractor/Sub-contractor)

\_\_\_\_\_  
Contractor/Sub-contractor License Number

\_\_\_\_\_  
Print or type Owner/CEO (Name)

\_\_\_\_\_  
Signature (Owner/CEO)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



## AUTHORIZATION for "OTHER" PAYROLL DEDUCTION



Project No: \_\_\_\_\_

Project Name: \_\_\_\_\_

Employee Name: \_\_\_\_\_

Employee Address: \_\_\_\_\_

Employee Phone Number :(    ) \_\_\_\_\_

I hereby authorize \_\_\_\_\_ to deduct the following  
(Name of Company)  
from my paycheck:

Amount of deduction:	\$ _____
Start date of deduction:	\$ _____
Frequency of deduction:	\$ _____
Termination date of deduction:	\$ _____

Reason for deduction: \_\_\_\_\_

This certification has been executed under penalty of perjury on this \_\_\_\_\_ day  
of \_\_\_\_\_ , \_\_\_\_\_ .

EMPLOYEE Signature: \_\_\_\_\_

EMPLOYER Signature: \_\_\_\_\_

## Statement of Employer Payments



Date:		In Reply, Refer to Case No:	
Prime:			
Subcontractor:			
PROJECT NAME:			
PROJECT CONTRACT NO.:		County/location:	

**HEALTH AND WELFARE**

NAME OF PLAN	Address, City and Zip		
ADMINISTRATOR	Address, City and Zip		
CLASSIFICATION(S) USED	CONTRIBUTION PER CLASSIFICATION PER HOUR		
CONTRIBUTIONS:	WEEKLY	MONTHLY	QUARTERLY
			ANNUALLY

**PENSION**

NAME OF PLAN	Address, City and Zip		
ADMINISTRATOR	Address, City and Zip		
CLASSIFICATION(S) USED	CONTRIBUTION PER CLASSIFICATION PER HOUR		
CONTRIBUTIONS:	WEEKLY	MONTHLY	QUARTERLY
			ANNUALLY

**VACATION/HOLIDAY**

NAME OF PLAN	Address, City and Zip		
ADMINISTRATOR	Address, City and Zip		
CLASSIFICATION(S) USED	CONTRIBUTION PER CLASSIFICATION PER HOUR		
CONTRIBUTIONS:	WEEKLY	MONTHLY	QUARTERLY
			ANNUALLY

**TRAINING**

NAME OF PLAN	Address, City and Zip		
ADMINISTRATOR	Address, City and Zip		
CLASSIFICATION(S) USED	CONTRIBUTION PER CLASSIFICATION PER HOUR		
CONTRIBUTIONS:	WEEKLY	MONTHLY	QUARTERLY
			ANNUALLY

IF YOU USE OTHER PLANS NOT LISTED ABOVE, YOU MAY USE THE BACK OF THIS FORM TO PROVIDE THIS ADDITIONAL INFORMATION

## PUBLIC WORKS PAYROLL REPORTING FORM

[illegible]

CERTIFICATION **MUST** be completed  
(See reverse side)

\*OTHER - Any other deductions, contributions and/or payments whether or not included or required by prevailing wage determinations must be separately listed. Use extra sheet(s) if necessary

S = STRAIGHT TIME  
O = OVERTIME  
SDI = STATE DISABILITY INSURANCE

**NOTICE TO PUBLIC ENTITY****For Privacy Considerations**

**Fold back along dotted line prior to copying for release to general public (private persons).**

(Paper Size then 8-1/2 x 11 inches)

-----

I, \_\_\_\_\_, the undersigned, am the  
(Name – print)

\_\_\_\_\_ with the authority to act for and on behalf of  
(Position in business)

\_\_\_\_\_, certify under penalty of perjury  
(Name of business and/or contractor)

that the records or copies thereof submitted and consisting of \_\_\_\_\_  
(Description, number of pages)

are the originals or true, full, and correct copies of the originals which depict the payroll record(s)  
of the actual disbursements by way of cash, check, or whatever form to the individual or  
individuals named.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

A public entity may require a stricter and/or more extensive form of certification.

Date \_\_\_\_\_

I, \_\_\_\_\_ (Name of Signatory Party) \_\_\_\_\_ (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

\_\_\_\_\_ (Contractor or Subcontractor) \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, that during the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said \_\_\_\_\_ (Contractor or Subcontractor) \_\_\_\_\_ from the full \_\_\_\_\_ weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 40 U.S.C. § 3145), and described below:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ — Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ — In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

NAME AND TITLE	SIGNATURE
THE WILLFUL FALSIFICATION OF ANY OFFICIAL RECORD OF THE ABOLITION OF THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.	



**STATEMENT OF NON-PERFORMANCE**

Payroll Number: \_\_\_\_\_

I, \_\_\_\_\_, \_\_\_\_\_ do hereby state that  
(Name of Signatory party) (Title)NO PERSONS employed by \_\_\_\_\_ performed work on  
(Name of submitting company)

the construction project known as \_\_\_\_\_

for the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_,  
(1<sup>st</sup> date of week) (month)and ending on the \_\_\_\_\_ day of \_\_\_\_\_.  
(last date of week) (month)\_\_\_\_\_  
Signature of Authorized Person\_\_\_\_\_  
Date

\*THIS STATEMENT IS NOT REQUIRED TO BE SUBMITTED UNTIL AFTER  
SUBMISSION OF THE INITIAL PAYROLL REPORT

# OWNER-OPERATOR LISTING

Banning- Form 2505

NAME OF CONTRACTOR EMPLOYING OWNER OPERATOR(S)		ADDRESS		PROJECT AND LOCATION		CONTRACT NO.			
PAYROLL NO.	FOR WEEK ENDING	DESCRIPTION OF EQUIPMENT	TRUCK CAL T NO. AND/OR EQUIP. LICENSE NO.	ST OR OT	DAY AND DATE	TOTAL WEEKLY HOURS	HOURLY RATE OF PAY	GROSS PAYMENT EARNED	CHECK NO.
				\$					
				O					
				\$					
				O					
				\$					
				O					
				\$					
				O					
				\$					
				O					
				\$					
				O					
				\$					
				O					
				\$					
				O					
				\$					
				O					
				\$					
				O					
				\$					
				O					

NOTE: CERTIFICATION WILL BE ACCEPTED ONLY FROM THE CONTRACTOR EMPLOYING THE OWNER OPERATOR: IT WILL NOT BE ACCEPTED FROM THE OWNER OPERATOR HIM / HERSELF.

## OWNER-OPERATOR LISTING STATEMENT OF COMPLIANCE

Banning- Form 2505

Date \_\_\_\_\_

do hereby state:

(Name of signatory party)

(Title)

(1) That I pay or supervise the payment of the persons reported on this form as Owner-operators by \_\_\_\_\_

(Contractor or subcontractor)

on the \_\_\_\_\_, that during the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_

(Building or work)

\_\_\_\_\_ and ending the \_\_\_\_\_ day of \_\_\_\_\_, all persons working on said project have been paid the

full weekly sums earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

\_\_\_\_\_ from the full weekly sums earned by any person and that no deductions have

(Contractor or subcontractor)

have been made either directly or indirectly from the full sums earned by any person, other than permissible deductions, as

described here: \_\_\_\_\_

(2) That any payrolls or listings or otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- ☐ In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll or listings payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- ☐ Each Laborer or mechanic listed in the above referenced payroll or listings has been paid as indicated on the payroll or listings an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

Remarks: \_\_\_\_\_

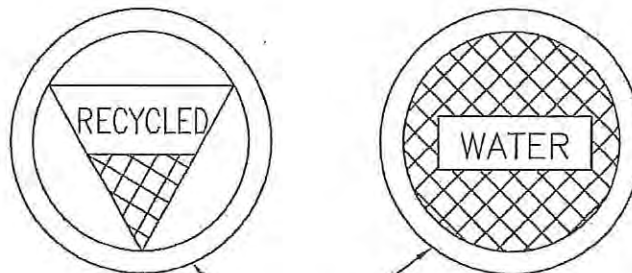
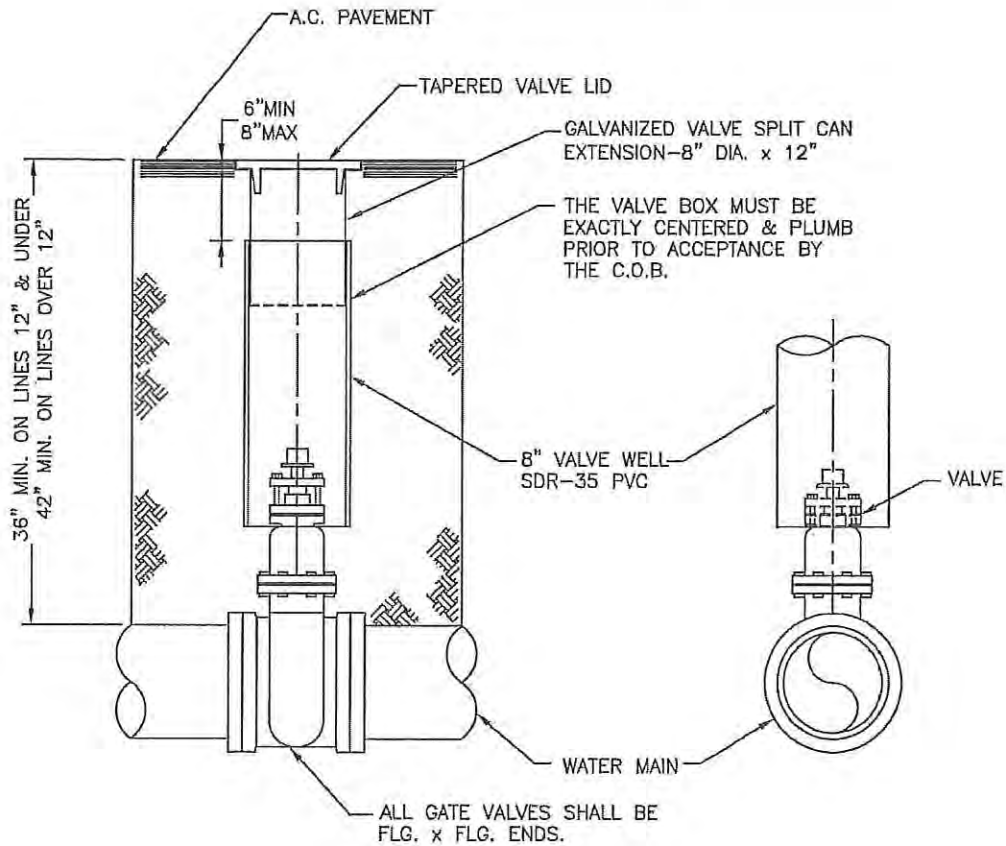
NAME AND TITLE

SIGNATURE

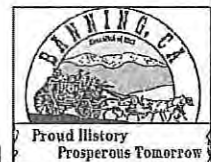
On federally-funded projects, permissible deductions are defined in regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c).

Also, the willful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution (see Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code).

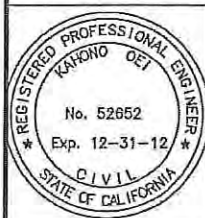
**APPENDIX C**  
**STANDARD DRAWINGS**



IRON COVER WITH THE WORD "WATER" CAST  
THEREON FOR DOMESTIC WATER LINES OR  
"RECYCLED" FOR RECLAIMED WATERLINES. VALVE  
LIDS MUST BE TAPERED



2012 EDITION



RECOMMENDED BY: *Arturo Vela* 12-12-12  
ARTURO VELA, P.E., SR. ENGINEER DATE

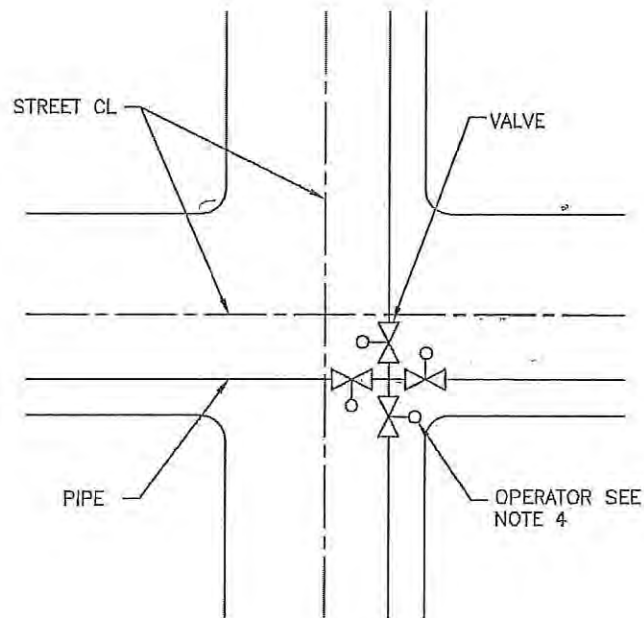
APPROVED BY: *Kahono Oei* 12-12-12  
KAHONO OEI, P.E., CITY ENGINEER DATE

**CITY OF BANNING**

STANDARD  
NO.

**VALVE AND VALVE  
BOX INSTALLATION**

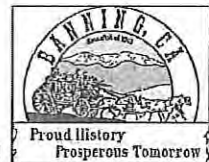
**W-20**  
1 OF 2



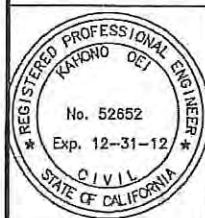
TYPICAL BUTTERFLY  
VALVE OPERATOR  
POSITION

NOTES:

1. PROVIDE VALVE STEM EXTENSION IF DEPTH TO VALVE NUT EXCEEDS 4 FEET. SEE C.O.B. STD. DWG. W-21.
2. IN NEW TRACT DEVELOPMENTS EXTEND VALVE WELL PIPE 2' ABOVE GROUND ON "KEY VALVES" FOR EMERGENCY SHUTOFFS.
3. BUTTERFLY VALVE OPERATORS SHALL BE LOCATED ON THE LEFT-HAND SIDE OF THE VALVE (AT THE TEE OR CROSS), LOOKING THROUGH THE VALVE TOWARD THE PIPE END.
4. WHERE CONCRETE CROSS GUTTERS AT STREET INTERSECTIONS WILL INTERFERE WITH VALVE BOXES, THE PIPELINE SHALL BE MOVED TO A POSITION 7 FEET OFF THE CURB FACE TO CLEAR THE CROSS GUTTER.
5. VALVES TO BE LOCATED ADJACENT TO FITTINGS WHEREVER POSSIBLE.
6. VALVES BOLTED TO FITTINGS WILL NOT REQUIRE ANCHOR BLOCKS.
7. ALL GATE VALVES SHALL BE MUELLER, RESILIENT WEDGE, EPOXY COATED, FLG. X FLG. ENDS.
8. ALL BURIED METALIC SURFACES SHALL BE PROTECTED BY AN ASPHALTIC OR BITUMINUOS COATING IN ACCORDANCE WITH AWWA C151 (ANSI A21.51).



2012 EDITION



RECOMMENDED BY: *Arturo Vela* 12-12-12  
ARTURO VELA, P.E., SR. ENGINEER DATE

APPROVED BY: *Ch* 12-12-12  
KAHONO OEI, P.E., CITY ENGINEER DATE

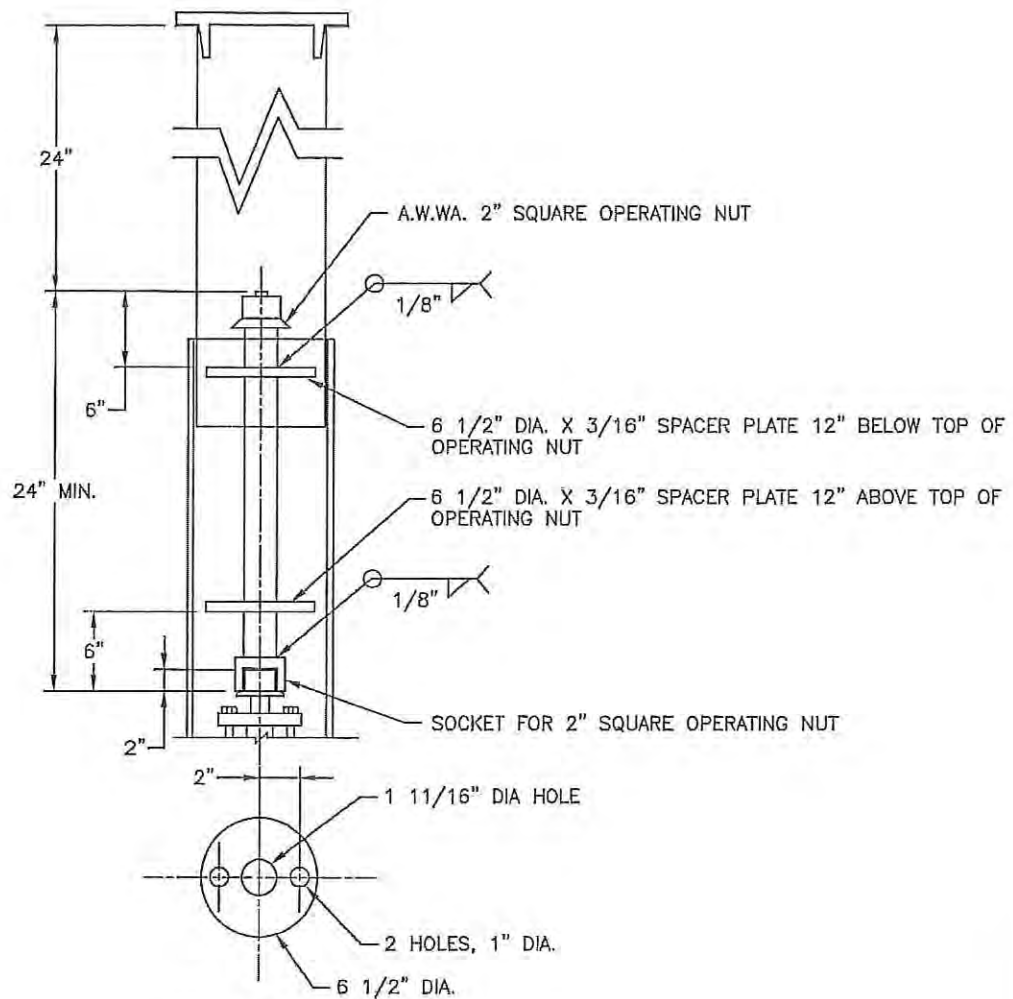
**CITY OF BANNING**

**VALVE AND VALVE  
BOX INSTALLATION**

STANDARD  
NO.

**W-20**  
2 OF 2

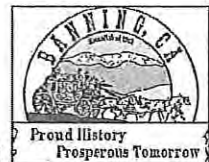




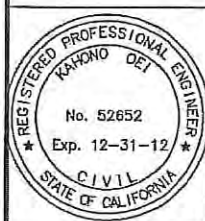
SPACER PLATE PLAN

## NOTES:

1. PROVIDE VALVE STEM EXTENSION WHEN DEPTH TO OPERATING NUT EXCEEDS 48" (FABRICATE EXTENSION TO FIELD MEASUREMENT - SEE NOTE 2)
2. NO VALVE STEM EXTENSION SHALL BE LESS THAN 2 FEET IN LENGTH UNLESS APPROVED BY THE CITY ENGINEER.
3. PROVIDE TWO SPACER PLATES. FIRST PLATE IS 6" DOWN FROM TOP OF EXTENSION. SECOND PLATE IS 6" UP FROM BOTTOM OF EXTENSION



2012 EDITION



RECOMMENDED BY: *Arturo Vela* 12-12-12  
 ARTURO VELA, P.E., SR. ENGINEER DATE

APPROVED BY: *Kahono OEI* 12-12-12  
 KAHONO OEI, P.E., CITY ENGINEER DATE

CITY OF BANNING

STANDARD  
NO.VALVE STEM  
EXTENSION

W-21



## **ADDENDUM NO. 1**

**[May 6, 2019]**

**INVITATION FOR BIDS  
FOR CONTRACT SERVICES  
FOR**

**ALTITUDE VALVE AT SOUTHWEST RESERVOIR**

**IFB No. 19-040**

**The referenced Invitation for Bids solicitation (IFB) has been modified via this addendum. The following may include vendor questions, answers, added/removed information, and/or changes to the IFB hereby officially established by the City.**

**This addendum is hereby made part of the referenced IFB as though fully set forth therein, and supersedes any conflicting statements previously advertised in this IFB solicitation. All other provisions of the IFB shall remain in their entirety.**

**Companies submitting a bid response shall acknowledge any and all addenda electronically via the PlanetBids electronic bidding system. Companies who fail to acknowledge any and all addenda will be deemed non-responsive to this IFB, and their bid response will not be considered for evaluation.**

**Please refer to the following page(s) for the details of this addendum.**

## Addendum Detail:

1. All appropriately submitted Questions are included below along with the City's corresponding answers.

#	Questions	Answers
1	Is the engineer's estimate available?	\$175,000
2	Other than start-up and programming from the Cla-Val manufacture, is any other programming or SCADA work required?	No other SCADA work is required. The City will contract separately for this work.
3	Will the City allow other brands/approved equal parts for the: 16" Singer Altitude Valve. Specifications for an equivalent part are attached	The City of Banning water system has standardized on Cla-Val control valves and ARI air valves. Standardization has been found to be cost-effective by stocking fewer spare parts and streamlining employee training. At this time, the City would prefer to continue using the vendors specified in the bid specifications.
4	The time for completion is 60 working days. This is not enough time for the submittal and procurement phase. It is anticipated the altitude valve will have lead times of 4 weeks for submittals and 10-12 weeks for procurement. The same is expected for the vault due to the requirements of the access hatch. This does not include submittal review times or a second submittal. Is it possible to extend the time for completion or add a submittal and procurement phase of 120 calendar days? Where the vault is located on the drawings it will require a retaining wall around three sides of the vault and possibly removal and replacement of the light including its foundation. The fence may also have to be removed and replaced in this area. This is due to the existing slope from the road to the reservoir fence. Can the vault be moved into the road? The vault is shown on the drawings as a precast vault. Due to the weight and limited access it will not be possible to stage a crane large enough to handle	a) The time for completion of the project is being extended to 120 working days as part of Addendum 1 herein. b) The use of retaining walls is not anticipated, other than temporary earthwork shoring during construction. c) Temporary removal of the light and foundation to facilitate construction is acceptable. The Contractor shall replace the light and foundation in-kind at no additional cost to the City. d) Temporary removal of section of fencing to facilitate construction is acceptable. The Contractor shall provide equivalent temporary fencing to secure the tank site during construction. The Contractor shall replace removed areas of fencing in-kind at no additional cost to the City. Fencing that is cut, bent, scratched, or otherwise damaged shall not be re-installed and shall be replaced in-kind with new material. e) The vault shall be placed where shown on the drawings. See attached sketch (Exhibit A of Addendum 1) for grading adjustments to be made to the road after installation of the vault to correct the slope around the vault. f) Coordination with the vault supplier prior to bidding is recommended. The contractor is responsible for the delivery and placement of the vault. The vault is anticipated to be delivered in three or more sections from the pre-cast supplier. The sections are typically unloaded and placed by the delivery truck. The pre-cast supplier determines if an outside crane is warranted based on the project conditions. Contractor and vault supplier are responsible for

## Addendum Detail:

		<p>selecting appropriate equipment, staging and sequencing, means, and methods for delivery and placement. The Contractor may, at the Contractor's option, provide a cast-in-place vault in lieu of a precast vault, provided that the Contractor furnishes a complete structural vault design equivalent to the precast vault, including but not limited to, loading ratings, layout, size, and functionality. The design provided by the contractor shall be sealed by a registered professional engineer in the State of California and is subject to the approval of the City of Banning. The cast-in-place vault, complete with design, shall be provided by the Contractor at no additional cost to the City.</p>
5	<p>Singer would like to be considered as an equal to the 16 Cla Val Altitude Valve for this project as well as Pratt's Air Valve. "</p>	<p>The City of Banning water system has standardized on Cla-Val control valves and ARI air valves. Standardization has been found to be cost-effective by stocking fewer spare parts and streamlining employee training. At this time, the City would prefer to continue using the vendors specified in the bid specifications.</p>

2. The time for completion of the project is being extended to 120 working days.

**THIS PAGE  
INTENTIONALLY LEFT  
BLANK**

## CITY OF BANNING

## M E M O R A N D U M



**DATE:** May 30, 2019

**TO:** Art Welch, Mayor  
Doug Schulze, ICMA-City Manager

**FROM:** Jerry Westholder, Chair – Electric Cost of Service Analysis Committee  
Tom Miller, Electric Utility Director

**RE:** Agenda Planning Proposal

Tom and I met on Thursday morning, May 30, 2019, for about an hour at the Corp Yard to discuss and outline the desired sharing of information and the completion a cost of service analysis for Banning Electric Utility. Below are the key points to be covered in a series of meetings relating to the cost of service analysis:

- **Selecting a rate consultant** - *Mr. Boris Prokop, Borismetrics, Los Angeles, CA*
- **Understanding Financial Management Priorities**
  - *Standard & Poor's Bond Rating "A-, stable"*
  - Debt Service Coverage
  - Operating Tier
  - Minimum Cash Reserves
  - Capital Improvement Program
    - Debt Payments
    - Line Extension Policy
    - Service Connection Policy
    - Joint Pole Reimbursements
- **Revenue Requirements**
  - Cash v. Return on Rate Base Rates
  - Class of Service
  - Public Benefit Program
  - Cap and Trade Program
- **Operating Expenses**
  - Functionalization and Allocation
  - Power Resources
    - Riverside Public Utility – Scheduling and Settlements
    - Resource Adequacy
    - 3<sup>rd</sup> Quarter Power Supply
    - Southern California Edison – Wholesale Distribution Access Tariff (WDAT)
  - Inventory (Expense v. Capitalized)
  - Depreciation (Rates and Funding)
  - Labor
  - General Fund Transfer



- Cost Allocation Study by MGT, Inc.
- Gross v. Net Revenues
  - Transmission Revenues
  - Congestion Revenues
  - Excess Supply Energy Sales
- Cost of Service Analysis (By Borismetrics)**
  - Results
  - Rate Designs
  - Draft Report

We believe that in order to cover this much material, we will have 4-6 meetings. We have mutually agreed to having evening meetings to encourage attendance. Also, we will take organized notes for publishing. We anticipate starting the cost of service study mid to late summer as we desire to use fiscal year 2019 as the historical year and fiscal year 2020 as the pro-forma year.

The next steps will be to get Borismetrics engaged and introduced to the E-COSA Committee.

For your information, attached please find Mr. Prokop's letter proposal of May 23, 2018. Via email, Mr. Prokop has agreed to honor the pricing presented in his letter of a year ago.

Attachment: Borismetrics Letter May 23, 2018

May 23<sup>rd</sup>, 2018**Letter Proposal for a COSA and Rate Study**

Tom Miller  
 Electric Utility Director  
 City of Banning Electric Utility  
 176 E. Lincoln St  
 Banning, CA 92220

Dear Tom:

Borismetrics (Consultant) is pleased to submit a proposal to the City of Banning Electric Utility ("Electric Utility") for a Cost of Service Analysis (COSA) and Rate study.

**Project Tasks, Schedule & Budget**

Below is a list of tasks, with a budget and schedule at a billing rate of \$135/hour.

<b>Borismetrics</b> City of Banning COSA & Rate Study	Hours Prokop \$135	Labor Expense	Month			
			1	2	3	4
Project meeting and data collection(Meet)	13	\$1,755				
Develop revenue requirement (RR)	15	\$2,025				
Review RR & other with staff by phone	2	\$270				
Classification & allocation in COSA with RR	25	\$3,375				
Finalize COSA/RR results (Meet)	20	\$2,700				
Develop bill frequency data for rate model	12	\$1,620				
Review of Specialized Rates/Other: EV/SCAF/BD/BR/NEM	15	\$2,025				
Draft new rates & review by phone	20	\$2,700				
Test rate designs	23	\$3,105				
Finalize rate results (Memo/Meet)	13	\$1,755				
Presentation to Council	8	\$1,080				
<b>Not to exceed budget (expenses included)</b>	<b>158</b>	<b>\$22,410</b>				

A kickoff meeting will discuss the tasks of the project, identify major issues and initiate data collection. Note that the study will provide the ability of meet Proposition 26 requirements and state legislation on a variety of rate issues. Generally, there are three steps for this project:

- Revenue Requirement (RR)
- Cost of Service Analysis (COSA)
- Rate Design

## Revenue Requirement

Revenue requirement analysis (RR) is a financial analysis that determines whether a change in revenue is required to meet costs to maintain financial viability. The revenue requirement normally provides a five-year projection of expenditures and revenues that is detailed by functional areas (distribution, A&G, power supply and transmission). If five year is not possible, a current fiscal year budget and financials will be utilized. The RR analysis is the basis for developing what is termed a revenue requirement whereby an agreed upon target revenue becomes a basis for the overall rate change. This revenue target provides a level of revenue to meet the Electric Utility's financial parameters including but not limited to conditions such as operating and non-operating reserve levels, working capital balances, and debt service coverage. The RR analysis results will be summarized in a RR memo and excel spreadsheet which will be discussed and review by phone with staff. The method of the study will be by both a cash basis and a rate of return (utility ) basis provided sufficient asset values are available for the utility basis.

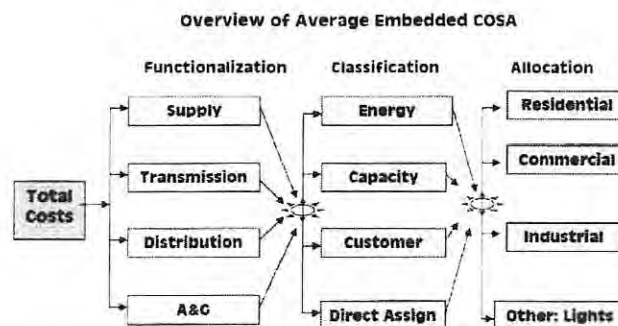
## Cost of Service Analysis

The revenue requirement developed in previous task will be utilized in the cost-of-service analysis (COSA), in which the overall revenue requirements are distributed among the customer classes. The average embedded (AE) COSA methodology will be employed in this study. The AE COSA is designed to provide an equitable allocation of the revenue requirement to the various customer classes by unbundled costing activity. The AE COSA is a generally accepted cost allocation methods in the cost of service studies.

The average embedded cost of service study conducted will be performed in these three steps as depicted graphically on the next pages:

- Functionalization
- Classification by activity
- Allocation by activity

The first step is to *functionalize* the revenue requirement, which was discussed previously. The second step in performing a cost of service study is to *classify* the functionalized expenses to cost components. Functionalized revenue requirements will be classified as capacity, commodity or customer related costs, or directly assigned to customer classes of service.



Classification is normally a matter of identifying the cost causation for that cost. For certain costs there are more than one recognized approach of classification. Some costs will be directly assigned to certain customer classes without being classified as demand, energy or customer related. One of the major functional areas is power cost. Below is an example of this.

Energy Allocation		July	August	Sept	October
Generation Resources	input				
Hydroelectric		10.00%	10.00%	10.00%	10.00%
Geothermal Plant No '1		90.00%	90.00%	90.00%	90.00%
Geothermal Plant No 2		90.00%	90.00%	90.00%	90.00%
Combustion Turbine No. 1		10.00%	10.00%	10.00%	10.00%
Combustion Turbine No. 2 (STIG)	40.00%	40.00%	40.00%	40.00%	40.00%
PS&I--Phase I & Phase II		10.00%	10.00%	10.00%	10.00%
Prepaid Debt Service		50.00%	50.00%	50.00%	50.00%
Member Resources					
Member Contracts	60.00%	60.00%	60.00%	60.00%	60.00%
Western Resource					
Western Costs (Jul-Dec Menlo Oilly)		20.00%	20.00%	20.00%	20.00%
Western Resource Pool Adjlstment		20.00%	20.00%	20.00%	20.00%
Market Power Purchases		80.00%	80.00%	80.00%	80.00%
NCPA Contracts		80.00%	80.00%	80.00%	80.00%
Market Purchases		80.00%	80.00%	80.00%	80.00%
Pool Energy Exchange		80.00%	80.00%	80.00%	80.00%
Pool Adjustments		80.00%	80.00%	80.00%	80.00%
Other Resources		80.00%	80.00%	80.00%	80.00%
Seattle City Light		80.00%	80.00%	80.00%	80.00%
Graeagle		80.00%	80.00%	80.00%	80.00%

The third step in performing a cost of service study is the *allocation* of the utility's total functionalized and classified revenue requirement to the customer classes of service. This is performed through the application of an appropriate allocation methodology for the following general categories:

- Energy Allocation Factors
- Demand Allocation Factors
- Customer Allocation Factors
- Other (revenue & direct assignment)

Marginal cost information from power supply costs may be utilized also. A memo summarizing the COSA results and a spreadsheet will be supplied to staff on completion.

### Rate Design

Given an agreed upon set of alternative rates at a meet with the Electric Utility staff, these rates will be tested in a customer billing utilizing either individual customer information or a bill frequency. Using the rates developed for each customer class, sample bills will be calculated for representative customers in each class, which will be compared with bills that would be paid under existing rates, again, clearly showing the impact on customers. Using the quantity derived for each customer class and the proposed service charges, revenues will be developed by class and tested against revenues from the revenue requirement analysis. A finalized set of rates will be set based on this analysis and a review with the Electric Utility staff. A review of specialized rates such as Electric Vehicle (EV), SCAF, Business retention/development, Low Income, and Net Energy Metering (NEM).

## **Budget & Schedule**

The table on page one has a not to exceed budget of \$22,410 for the project. The project could be completed in about three to four months given data and staff availability.

## **Data Request**

The following is a list of data for this project which will be discussed at the kickoff meeting:

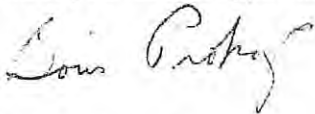
1. Recent audited financial statement and current budget and plant asset accounts;
2. Historical monthly revenue, energy sales, revenue and customer counts for at least two years;
3. Recent official statement from bonding for electric system if it exists;
4. Current CIP plan;
5. Hourly system loads;
6. Monthly power supply energy, demand and cost by resource for full year that corresponds to a historical financial or budget.
7. Individual customer billing data by month for at least one year including NEM generation if available and NEM system sizing.
8. Copies of current rate schedules.
9. Individual customer hourly data if available.

## **Borismetrics' Background**

Borismetrics has the following unique advantages for the Electric Utility's study:

- Recent successful completion of Rate and COSA Studies for LADWP, the City of Ukiah and the Lathrop Irrigation District
- Substantial California public utility experience; over twenty public utility rate studies
- Competitive labor rates at no loss of expertise
- Office in Southern California
- California Public Utility Commission (CPUC) rate and COSA expert testimony
- Substantial public meeting experience

Thank you for this opportunity



Boris Prokop, Principal